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TENTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Draft discussion guide for the regional preparatory meetings for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

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INTRODUCTION

1. The quinquennial United Nations congresses on the prevention of crime and the treatment of offenders have been organized since 1955, in pursuance of General Assembly resolution 415 (V) of 1 December 1950. Pursuant to General Assembly resolution 46/152, on the creation of an effective United Nations crime prevention and criminal justice programme, the United Nations congresses, as a consultative body of the programme, are to provide a forum for:

(a) The exchange of views between States, intergovernmental organizations, non-governmental organizations and individual experts representing various professions and disciplines;

(b) The exchange of experiences in research, law and policy development;

(c) The identification of emerging trends and issues in crime prevention and criminal justice;

(d) The provision of advice and comments to the Commission on Crime Prevention and Criminal Justice on selected matters, as requested by the Commission;

(e) The submission of suggestions for the consideration of the Commission regarding possible subjects for the programme of work.

2. The General Assembly, in its resolution 52/91 on the "preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, adopted on the recommendation of the Commission at its sixth session, decided on the substantive items to be included in the provisional agenda for the Tenth Congress, as well as on the topics for the workshops. In the same resolution, the Assembly requested the Secretary-General to prepare a discussion guide for the consideration of the Commission, in cooperation with the institutes for the prevention of crime and the treatment of offenders affiliated with the United Nations, and invited Member States to be actively involved in that process.

3. The items to be included in the provisional agenda of the Tenth Congress, as approved by the General Assembly, are:

(a) Promoting the rule of law and strengthening the criminal justice system;

(b) International cooperation in combating transnational crime: new challenges in the twenty-first century;

(c) Effective crime prevention: keeping pace with new developments;

(d) Offenders and victims: accountability and fairness in the justice process.

4. The issues for the four workshops are:

(a) Combating corruption;

(b) Crime related to the computer networks;

(c) Community involvement in crime prevention;

(d) Women in the criminal justice system.

5. Further, the Assembly decided to reserve the first two days of the plenary session at the Tenth Congress primarily for statements by representatives at a high political level on the main themes of the Congress, and requested the Secretary-General to prepare an overview of the worldwide state of crime and criminal justice for presentation at the opening of the Congress.

6. The present discussion guide, which highlights some priority issues to be dealt with under the four substantive items of the Congress, as well as its workshops, is intended to be used as an annotated provisional agenda by the regional preparatory meetings. It is also intended to stimulate discussion of matters of major concern to the international community, with a view to identifying the main policy options for consideration and action by the Congress.

SUBSTANTIVE ITEMS TO BE INCLUDED IN THE PROVISIONAL AGENDA OF THE TENTH CONGRESS

A. Promoting the rule of law and strengthening the criminal justice system

7. In the last decade, many developing States have embarked on constitutional reforms, the creation of new institutions, the promotion of respect for human rights and pluralist elections that support the participation of civil society in governance. At the same time, most eastern European States and some Asian States are experiencing a transition to a market economy. The growing political openness, linked to the trend towards democratization of institutions and liberalization of socio-economic policies, has created a favourable environment for development activities aimed at strengthening the rule of law.

8. With the emergence of new democracies during the 1990s, technical cooperation has focused on good governance—the capacity of Governments to deliver quality public services to their populations and to maintain the rule of law. The criminal justice systems of many countries have experienced great difficulty in dealing with the upsurge of crime in the wake of major political changes and the resulting economic dislocation. The vacuum created by institutional breakdowns and dwindling social controls has allowed organized crime to establish itself, for example, through racketeering, prostitution, drug trafficking, fraudulent schemes and misuse of public funds. Endemic corruption and mismanagement have undermined much development assistance and endangered international investments. The situation has become so critical in a number of countries that the capacity of the government to control crime has become a major test of its viability. As a result, since the early 1990s, the international community, increasingly conscious of the need for a stable legal framework for development, has more systematically incorporated activities focusing on justice and the rule of law in its development assistance.

9. The discussion of this topic should centre on the efforts made to strengthen criminal justice systems and the rule of law under new conditions. The Tenth Congress could serve as a platform for a stocktaking of technical assistance offered at both bilateral and multilateral levels and for identifying the areas where assistance is most needed. It could also offer guidance on the future directions for technical cooperation, while considering the most successful prototype assistance projects for strengthening the rule of law and steps that could be taken to increase the number of such projects.

10. The needs, as expressed by Member States, are many. Very often, developing countries face difficulties in coping with the rapid political and socio-economic changes and increasing sophistication of crime, requesting assistance in the revision or formulation of new legislation. Legal reform, including new penal and procedural codes, ranks high on the list, as does special legislation to deal with particular problems, such as corruption, organized crime, and money-laundering. Many developing countries and States with economies in transition are in need of technical assistance in building or reforming their crime-prevention and criminal justice systems. Because of the lack of funds, government agencies responsible for crime prevention and criminal justice are

often understaffed and lack both modern training and appropriate equipment. Assistance is often requested for the improvement of some aspects of criminal justice operations, such as the professionalism of police forces and the independence of the judiciary. Correctional needs include alternatives to overcrowded prisons. Other needs expressed relate to the lack of both material of all kinds and the training to handle specialized equipment. Many States seek advice and assistance in dealing with mounting juvenile delinquency and the treatment of juvenile offenders.

1. Towards a multilateral and result-oriented approach

11. The importance of respect for the rule of law and its role in contributing to sustainable development are recognized by the United Nations as well as other entities and international organizations. In its resolution 46/152, annex, section I, the General Assembly recognized that "democracy and a better quality of life can flourish only in a context of peace and security for all. Crime poses a threat to stability and to a safe environment. Crime prevention and criminal justice, with due regard to the observance of human rights, is thus a direct contribution to the maintenance of peace and security ...". In the same resolution, which represented the culmination of a long process of reviewing the United Nations Crime Prevention and Criminal Justice Programme, the General Assembly encouraged "all developed countries to review their aid programmes in order to ensure that there is a full and proper contribution in the field of criminal justice within the overall context of development priorities".

12. Effective international cooperation in crime prevention and criminal justice depends, in the first instance, on the capacity of the criminal justice system of a given country to deal adequately with the crime problems that exist or are likely to occur. Raising the level of expertise and professionalism of the criminal justice system often requires resources that are lacking in many countries.

13. Among its goals, technical cooperation in crime prevention and criminal justice should lead to the adoption of strategic measures at the national level to curtail mounting problems, such as that of organized crime, as well as to promote effective mechanisms for regional cooperation based on judicial cooperation and police arrangements between States, with an exchange of information and experience in all crime-related areas.

14. International cooperation includes a wide range of activities, such as assistance in updating obsolete criminal codes; drafting and reforming legal provisions on specific issues; the reorganization of key agencies, such as ministries of justice and of the interior, police forces and judiciary and penitentiary institutions; training of criminal justice personnel to improve their technical capacities and upgrade their level of professionalism; mutual assistance in criminal matters; support of computerization programmes; and the protection of, and assistance to, victims of crime and abuse of power.

15. International cooperation and technical assistance in crime prevention and criminal justice is currently being provided bilaterally by Governments and through a number of intergovernmental organizations and international development agencies and funds (for example, the United Nations Development Programme,* the World Bank, the regional development banks, in particular the Inter-American Development Bank, the

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*Among the agencies referred to, UNDP has in recent years pursued policies that emphasize capacity development for effective governance, as a priority means of supporting the goals of poverty eradication, environmental improvement, gender equity and sustainable livelihoods. Particularly relevant, within the framework of UNDP efforts aimed at promoting and supporting good governance, are the activities of the Regional Bureau for Europe and the Commonwealth of Independent States, which implements a regional programme to support the strengthening of democracy, governance and participation. In the early 1990s, UNDP sponsored some reforms of legislative and judicial systems in response to demands from the States concerned. Since 1994, UNDP has devoted a significant portion of its resources to good governance. Over $44 million were allocated to 62 projects in that area; since 1996, such activities have increased substantially.

Commonwealth Secretariat, the Council of Europe and the European Union), as well as through a variety of national and international non-governmental organizations. Within the United Nations Secretariat, in addition to the Centre for International Crime Prevention, several other entities, such as the Department of Peacekeeping Operations, the Department of Economic and Social Affairs, the Office of the United Nations High Commissioner for Human Rights, the United Nations International Drug Control Programme and the regional commissions provide assistance in their respective fields of competence. The United Nations Interregional Crime and Justice Research Institute (UNICRI) and bodies such as the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the European Institute for Crime Prevention and Control, affiliated with the United Nations, and the African Institute for the Prevention of Crime and the Treatment of Offenders engage in the collection and dissemination of relevant information, research and training, as well as the promotion of collaborative action with regard to problems of common concern.

16. There are a number of advantages of multilateral assistance, especially when rendered through the United Nations. It provides a unique forum for raising public awareness and building the consensus needed for concerted action. Its neutrality permits the United Nations to develop special relationships of trust with countries and their people and to provide stable, long-term capacity-building assistance free of short-term political or economic advantages or other considerations. Its programming of development assistance according to the needs of the countries concerned and its universal presence, with a network of country and regional offices, enable the United Nations to operate effectively at the country level. Finally, Member States require assistance based on the broadest possible experience and on a range of options, so as to adapt successful solutions to specific national, legal, social and cultural circumstances. Such broad experience and options are generally not available when bilateral assistance is given.

2. Technical assistance in post-conflict reconstruction

17. The experience acquired in the most recent United Nations peacekeeping operations suggests that the criminal justice system is among the institutions that suffer the most in conflict situations. The criminal justice system is often rendered subservient to political power, and when it appears resistant to the attainment of unlawful objectives, it invariably becomes a prime target for dismantlement or destruction. Success in rebuilding a country after external or intra-State conflicts depends largely on the re-establishment of the rule of law, with an adequate level of security for all citizens. The rehabilitation of a criminal justice system capable of ensuring the maintenance of law and order, with due consideration for the protection of civil rights and basic freedoms, has therefore become one of the top priorities.

18. The proscription of violence against persons and, especially, of systematic crimes against humanity needs to be properly enforced. Crimes of a transnational and organized character are most likely to spread in the context of armed conflict during the transition to peace. Without the necessary law enforcement mechanisms and infrastructures, societies subjected to conflicts may become safe havens for criminal organizations, both national and transnational. Unfortunately, lawlessness, banditry, smuggling and victimization of innocents usually accompany war. In addition to the creation of international mechanisms of crime control and criminal justice (war tribunals), it is crucial that national and local criminal justice institutions be made to work, so that justice can be done (and be seen to be done), under the rule of law, while serving also as a means of promoting public confidence and social cohesion. Consideration could be given to indigenous approaches to reconciliation, including the opportunity to use elements of traditional forms of justice.

3. Questions for discussion

19. The regional preparatory meetings may wish to consider the following questions:

(a) Which conditions are conducive to the promotion of the rule of law?

(b) In pluralistic societies, what special approaches are needed to promote the rule of law as well as economic and social development?

(c) What types of technical assistance are needed in post-conflict reconstruction? How can they be best provided by the United Nations?

(d) What approaches have been successful in establishing an effective and fair criminal justice system?

(i) Which approaches have been the most successful in involving local stakeholders in identifying the needs of and deficiencies in criminal justice systems?

(ii) Which approaches have been the most successful in reforming the law and the judicial system?

(iii) Which approaches have been the most successful in democratizing the police?

(iv) Which types of specialized training have been the most appropriate to meet new challenges?

(v) Which approaches have been the most successful in bilateral and multilateral cooperation?

(vi) What modalities have been the most successful in international cooperation?

(e) What is the best way to evaluate the results and impact of technical assistance projects on the establishment and maintenance of a stable legal framework?

B. International cooperation in combating transnational crime: new challenges in the twenty-first century

20. Recent years have witnessed an increase in transnational crime, which has taken on new characteristics, as reflected particularly in organized transnational crime. The emergence of new forms of transnational alliances between organized criminals calls for an effective response. The interaction between the research and academic environment and political institutions at the national, regional and global levels has started to bear fruit, though still at a slow pace. The need to give practical effect to the achievements of the international community in enacting new laws and regulations designed to combat crime should be pursued, so as to strengthen the rule of law. In particular, the problems arising from transnational organized crime require that legal and criminological expertise be applied to strengthen security, taking into account other needs of human beings and the society at large, with a view to creating better laws and more user-friendly criminal justice institutions.

21. The focus of the Congress should be placed on the prevention and control of specific contemporary forms of crime, while at the same time building up expertise, developing training tools and collecting best practices worldwide. The issues outlined below have been identified as being of particular relevance to the Tenth Congress.

1. Convention against organized transnational crime

22. The General Assembly, in its resolution 51/120, requested the Commission on Crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of an international convention against organized transnational crime. The inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against

organized transnational crime, in the report of its meeting held at Warsaw from 2 to 6 February 1998, noted the following: "There was a broad consensus on the desirability of such a convention ... There was much to be gained from this international legal instrument, which would not only build on, but also go beyond, other successful efforts to deal with pressing issues of national and international concern ... There was unreserved confirmation of the commitment of the international community to devote priority attention to developing such a convention and ensuring its full implementation" (E/CN.15/1998/5). In case the Commission completes its work on the proposed convention, the Congress could function as a platform for discussion of the most viable modalities for implementation of the various provisions of the convention. The Congress may also wish to examine existing international law and legislation that could be of benefit in that regard. At the same time, national legislation, both substantive and procedural, could be analysed to verify its capacity to meet the requirements of such an international instrument.

2. Action against organized transnational crime

23. Practical measures that would help law enforcement officials in preventing and controlling organized transnational crime could be discussed, including international cooperation in the inspection of crime scenes, the gathering of evidence and criminal techniques. Further, methods for gathering and analysing operational data on transnational crime could be developed. The relationship between organized crime and the development of tension and civil strife needs to be examined in order to verify the extent to which organized crime can provoke tension and civil conflicts.

3. Extradition and mutual legal assistance

24. The Congress could facilitate the discussion of problems relating to mutual assistance in criminal cases and in extradition. The model treaties are well-tested instruments of international cooperation and, as such, are part of the wider efforts to prevent and control organized transnational crime and strengthen regional and international cooperation in law enforcement and judicial proceedings. The Congress can benefit from the presence of legal experts and policy makers by conducting a dialogue conducive to the refinement of existing, and the elaboration of new, instruments for cooperation in criminal justice, for example, by consolidating the model treaties into a comprehensive instrument for international cooperation. The feasibility of creating international mechanisms for the settlement of extradition disputes could be explored. Internationally recognized principles embodied in existing conventions could be reviewed. Model legislation on mutual legal assistance could be elaborated, which, together with the model legislation on extradition, could be used as an efficient tool to improve international cooperation in criminal matters. Technical assistance activities in that area, focusing on training and advisory services, could include the promotion of techniques for the upgrading of skills. Further, the Congress could provide an opportunity to explore the feasibility of alternatives to formal extradition by simplifying extradition procedures.

4. Economic and financial crimes

25. In the area of economic and financial crime, the Congress could serve as a platform for the discussion of specific forms of crime, including the following: fraud and embezzlement; usury; counterfeiting of products and official documents; forgery; extortion; blackmail; use of illicit goods and services; tax evasion; abuse of positions of trust in the commercial sector or abuse of power by public officials; antitrust violations; international investment swindles; and other serious crimes committed by organized criminal groups, including interference by such groups in privatization processes in developing countries and States with economies in transition, as well as how such crimes could be prevented.

5. Money-laundering

26. Discussions could be held on areas of technical assistance in support of the implementation of the global programme against money-laundering of the Office for Drug Control and Crime Prevention of the Secretariat (including training courses, advisory services and examples of best practice). New developments in money-laundering in the age of high technology could be highlighted, in particular, how the new high technology creates alternatives to, and loopholes for, money-laundering.

27. Related issues that could be discussed under this heading involve collaborative methods for the tracing and seizure of assets, including bank secrecy and international asset-sharing, as well as practical measures, such as the exchange of data, information and experience, to deter, detect and prosecute financial crimes. In addition, other ways of ensuring financial disclosure, transparency and accountability could be developed.

6. Corruption

28. The Congress could provide a forum for discussion on the basis of the International Code of Conduct for Public Officials (General Assembly resolution 51/59, annex), the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191, annex) and the fifty recommendations of the Expert Group Meeting on Corruption, held at Buenos Aires from 17 to 21 March 1997 (E/CN.15/1997/3/Add.1). Modalities of a plan for the practical application of mechanisms against corruption could be discussed. Technical assistance proposals to support the application of those mechanisms, in particular, training courses, advisory services and examples of best practice, could be elaborated. Model regulatory regimes could be developed and banking rules formulated. Legal mechanisms to control overseas corruption, particularly in private business, could be suggested. Administrative and civil remedies as alternatives to criminal sanctions could be considered, in order to relieve the criminal justice system from the burden of corruption cases, reserving penal measures for high-level offenders. The involvement of the public at large could be addressed, for example, through information and awareness-raising campaigns on the negative impact of corruption on the well-being of society and on national development. Another issue for consideration could be the combating of corruption by criminalizing bribery, as recommended by the General Assembly.

7. The role of criminal law in the protection of the environment

29. The presence of policy makers and international experts at the Congress could provide an opportunity to exchange views on the creation of practical mechanisms to ensure that the problem of environmental crime is dealt with in a cohesive manner, so as to avoid cases in which corporations or individuals look for countries with weak or unenforced environmental legislation of which they could take advantage. The creation of an international platform to coordinate action in the fight against environmental crime could be considered. Such a platform would provide an opportunity to exchange information, to carry out crime analyses and to provide for coordinated international criminal legislation on the environment by formulating generally recognized principles that could be embodied in an international convention.

30. Environmental crimes deserving specific attention include "waste tourism", the illegal trading in hazardous material, and crimes against protected fauna and flora. Technical assistance in that area could include a study on the extent to which organized criminal groups are becoming more and more involved in the trade in hazardous materials and endangered species, as a very lucrative contemporary form of crime.

31. Expensive waste-disposal fees in developed countries have created incentives and new business opportunities for organized criminal groups to find cheaper disposal sites in developing countries with more lenient or no waste-disposal regulations. Criminal networks often offer significant amounts of money for the

disposal of hazardous waste. Developing countries are often tempted to accept the money without considering the consequences. The short-term economic gain results in a long-term ecological loss if hazardous waste is dumped indiscriminately. It can lead to contaminated soil, groundwater, rivers and seas, killing many species of fauna and flora and endangering human health. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989, together with regional agreements, has created the basis for halting such waste tourism. To implement the Basel Convention, however, States need to enact and enforce national legislation, including the application of penal sanctions. To that end, the preparation of a manual for law enforcement and customs officers on how to detect and deter the trafficking in hazardous substances could be considered.

32. The statistics on trade in animals, plants and their parts and products show a clear division of countries affected by such trade into exporting and importing countries, the latter sometimes being the re-exporters of end products. The criminal networks involved in the illegal trade are varied and extremely specialized. Some networks deal in live animals, others in ivory, reptile skins and rhinoceros horns, and others in plants. To counteract the trade, cooperation between the law enforcement agencies of importing and exporting countries is vital. In that connection, the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is organizing training courses for law enforcement officials. To supplement those courses, the preparation of a manual for law enforcement officials on how to detect and deter the smuggling of endangered species might be envisaged. The Congress should encourage such initiatives and suggest ways of promoting cooperation on such issues.

8. Nuclear crime

33. With regard to nuclear crime, including all illegal activities related to real or purportedly radioactive substances, as well as rare metals and rare earths, policy makers at the Congress could explore the feasibility of undertaking an in-depth analysis of nuclear crime, including issues such as the amount of radioactive material on the market, the availability of weapons-grade fissionable material, where it comes from and whether there is an actual market for it, as well as the use of radioactive material by parties other than Governments. The debate on whether nuclear crime is a phantom or a real threat has split policy makers and law enforcement agencies into two camps. One proclaims that a market for nuclear materials and rare metals does not exist, a fact that would be readily apparent to those dealing in such materials, while the other regards nuclear crime as a serious threat for the twenty-first century. Two categories of nuclear crime have become known: fraudulent offers of radioactive substances and fraudulent dealing in inactive substances (rare metals or earths); and the illegal trading in, or handling of, radioactive substances. To date, no incidents of nuclear terrorism, considered as the use of radioactive material by parties other than Governments, has become known. Nuclear crime has emerged as a major danger because of the social, political and economic changes in some regions.

9. Car theft

34. The Congress will provide an opportunity to examine the progress made in the elaboration of a manual for law enforcement officials on combating various types of crime, including car theft, and its use in training courses. A comprehensive worldwide study of that widespread form of crime could be envisaged to complement the findings and recommendations of the meetings held on the subject and to determine the feasibility of establishing mechanisms for coordinated action to combat crime involving motor vehicles.

10. Migration and crime

35. The process of globalization brings with it the growing migration of persons across national boundaries, allowing criminals to take advantage of the many loopholes in international cooperation in criminal justice matters. The Congress could facilitate discussion of the interrelationship between migration and crime, of

criminal offences in relation to large-scale immigration, of migrants as perpetrators of crime and of migration triggered by criminal offences, such as trafficking in illegal migrants.

11. Trafficking in human beings

36. Trafficking in human beings is a very serious problem facing the international community. Currently, such trafficking is considered to be the fastest-growing criminal market worldwide. Research findings on the global aspects of such criminal activities continue to provide an inadequate basis for obtaining reliable factual information on the extent of the problem, which is seen to consist of the following three major components: the illegal smuggling of aliens destined for the labour market in different parts of the world; sexual slavery of women and children; and economic slavery in all its forms. The Congress will provide an opportunity to representatives of Governments and relevant organizations to assess the extent of the problem and suggest effective countermeasures.

12. Terrorism in all its forms

37. Terrorism is a global threat to national and international security, introducing a random violence that challenges the ability of States to protect their citizens. As terrorism transcends national boundaries and changes its patterns and methods of operation, making full use of modern technologies, no region or country remains immune. Terrorists have established networks of alliances using advanced communications systems and funding mechanisms, and have become increasingly skilful at taking advantage of gaps in legal systems. The General Assembly has made substantial progress in formulating guidelines to promote international cooperation in combating terrorism in all its forms and dimensions. On the basis of such progress and other initiatives undertaken at various levels, the Congress should examine practical ways of strengthening national action and promoting international cooperation, in particular, by establishing close collaborative ties between law enforcement agencies, developing practical arrangements and organizing training courses and seminars on how to deal with specific aspects of terrorism nationally and internationally. The Congress can also provide inputs on how to assist Member States in improving their capabilities to prevent, investigate and effectively respond to terrorist attacks.

13. International cooperation

38. Generally, with regard to technical assistance in promoting efforts to combat organized transnational crime, the Congress should be a propitious occasion for policy makers to identify areas for the elaboration and development of universal legal tools (that is, model laws, declarations and manuals) and of practical strategies to assist requesting countries, particularly developing countries, economies in transition and countries recovering from conflict, in preventing and controlling organized criminal activities. Those instruments should be designed in such a way that they could be implemented worldwide, with the requisite modifications and adaptations. The feasibility of establishing a coordination and cooperation mechanism between the relevant international organizations and the private sector could also be studied, in order to provide better and more effective technical assistance at reduced costs; to expand the scope and context of technical assistance; to develop uniform criteria for the provision of assistance and the evaluation of its results; and to make the provision of technical assistance more uniform and systematic.

14. Questions for discussion

39. The regional preparatory meetings may wish to consider the following questions:

(a) With regard to the most serious forms and operations of organized crime (such as money-laundering and the trafficking in human beings, illicit drugs and stolen vehicles), has there been any attempt to measure

their seriousness, as well as their social and economic impact on the countries concerned? Could the relevant results be compared with similar experiences in other countries?

(b) What kind of policy-oriented and applied research activities have been undertaken to study organized transnational crime? What interaction takes place between independent research institutions and government agencies?

(c) With regard to economic and financial crime, with a special focus on money-laundering and corruption, would it be possible to give examples of results provided by multidisciplinary research (economic and criminological surveys, security studies etc.) carried out at the national level and of how the research findings have influenced policy and practice?

(d) In connection with the role of criminal law in the protection of the environment, which are the major environmental offences that should be dealt with by criminal law? To what extent are organized criminal groups involved in crimes against the environment? What kind of mechanisms at the national, regional and international levels can be established in order to ensure concerted action in combating environmental offences?

(e) Have any studies been conducted and conclusions reached on the extent of the problem of terrorism and its impact on national and international security? How can regional and international cooperation in the field of crime prevention and criminal justice best contribute to combating terrorism?

(f) What measures would be most effective for the United Nations to adopt in responding to the needs of countries for technical assistance in strengthening national capacities for dealing with transnational crime?

C. Effective crime prevention: keeping pace with new developments

40. Over the past two decades, the international criminal justice community has increasingly focused its attention on identifying, developing and evaluating measures to prevent crime. That process, which received fresh impetus in reaction to the contention that "nothing works", has continued and yielded results suggesting that there are some effective crime-prevention measures based on traditional concepts (such as strengthening the role of the family and encouraging formal education). Other innovative measures are based on technological developments that permit the criminal justice community to react in a timely and effective manner to new crime situations. Indeed, especially in the last decade, keeping pace with new developments in crime and its prevention has become a major priority for many Governments and a real challenge to law enforcement and other crime-prevention practitioners.

41. The changing dynamics and patterns of crime have served as a catalyst for the shift in approach. While new information technologies enabling better communication (for law-abiding citizens and offenders alike) are essentially limited to developed countries, the relatively brief period between the ninth and tenth United Nations congresses on the prevention of crime and the treatment of offenders has seen a tremendous expansion in that regard. However, while the proliferation of new information technologies has led to a number of advantages in global communication and cooperation, it has also helped to foster new forms of crime domestically, regionally and internationally.

42. The Economic and Social Council noted those developments in its resolution 1997/33, adopted on the recommendation of the Commission at its sixth session, to which was annexed the text of elements of responsible crime prevention: standards and norms. In section I of that text, it was noted that "the concept of crime prevention should not be limited to conventional forms of crime, ... but should encompass new forms of crime, such as organized crime, terrorism, illegal trafficking in migrants, computer and cybercrimes, environmental crime, corruption and illegal commerce related to the acquisition and development of weapons

of mass destruction ... The concept of crime prevention should take into account the growing internationalization of criminal activities between the global economy, advanced technologies and national phenomena of crime, with special consideration for developing countries."

1. Crimes linked to xenophobia, racism and ethnic conflict

43. Among the major concerns, rising xenophobia, racism and intolerance towards different ethnic groups have been viewed as presenting the greatest challenge. The erosion of once rigid borders and systems and the globalization of trade has prompted changes in domestic and international labour markets, with the inevitable migration of people seeking better work and life opportunities. Migration from South to North and migration caused by different levels of socio-economic development have produced problems of crime prevention and control in receiving countries. Great challenges for Governments have emerged with regard to the protection of the rights of immigrants and migrants who, because of their possibly illegal status, may become offenders, but who are more often victims. Xenophobia and racial hatred have fuelled interpersonal and collective violence, while fostering criminal opportunities involving either members of organized crime networks or victims of organized criminals who take advantage of particular groups (for example, through demands for protection money or through corrupt officials who demand bribes for issuing work and residence permits).

44. The International Conference on Migration and Crime, convened at Courmayeur, Italy, in October 1996 by the International Scientific and Professional Advisory Committee in cooperation with the United Nations and the Government of Italy, analysed various aspects of the relationship between the two phenomena and suggested some parameters for action. The United Nations Crime Prevention and Criminal Justice Programme has addressed both aspects in a number of policy statements and related practical actions aimed at promoting the rule of law, training law enforcement officials and changing public attitudes to promote greater tolerance of multiculturalism and readiness for sound integration. However, the Commission at its sixth session noted that the authorities themselves were often the culprits: "... violence against migrants was becoming an increasingly serious problem ... Crimes were often committed against such persons by immigration authorities. It was recommended that due attention should be paid by States to the prevention and sanctioning of that form of abuse of power. Immigration laws should focus more on the network of criminal organizations involved in trafficking in migrants than on the punishment of migrants with no legal status ... It was pointed out that repatriation procedures should prevent situations that might endanger the integrity, dignity and human rights of migrants."[1]

45. Crime-prevention measures and techniques should include legal, sociopolitical and economic interventions aimed at preventing crimes and abuses linked to xenophobia and racism, including settlement and resettlement programmes for migrants, media campaigns to foster tolerance and multiculturalism, education programmes aimed at preventing aggressive behaviour towards foreign children, ethnic policing and situational prevention of public disorder.

2. New technologies

46. The globalization of communications and improved information management have facilitated new forms of crime, with potentially far-reaching consequences for crime prevention. In the developed world, many individuals use modern information technologies (such as cellular telephones and the Internet) to remain connected to the community and to enhance security. In developing countries, where telephone lines are still largely lacking, tight family control and support still secure a basic feeling of safety, which may, however, weaken as information dissemination expands and reaches that portion of the world's population.

47. At the time of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a new form of non-custodial sanction, electronic monitoring, was being implemented in several developed countries. Shortly thereafter, situational crime prevention benefiting from further advances in

information technologies, including satellite monitoring, closed-circuit television, firearms tracing and ballistics cross-referencing and electronic most-wanted bulletin boards, have been introduced with positive results and potential applications in other parts of the world. A further example is provided by recent developments in the use of DNA evidence, which have helped to convict offenders while allowing a mechanism for establishing innocence during the trial.

48. For example, some jurisdictions in the United States of America have well-established satellite monitoring of offenders serving non-custodial sanctions. Satellite technology has already been applied by the automobile industry to prevent the theft of motor vehicles or facilitate the recovery of stolen vehicles that transmit signals making it possible to determine their location. Further advances have been made in fingerprinting technology, so that it is now possible for a police officer to transmit electronically the image of a fingerprint to a central database for processing, and to facilitate the possible arrest or detention of the offender. Highly advanced marking systems have been introduced in the production of currency, making counterfeiting extremely difficult. Other technological advances are on the way to facilitate crime prevention.

49. As such information technologies are perfected and made available to a greater number of countries, their widespread use will follow. But there remain basic questions of a legal, research or programme planning nature, some of them having been noted by the Ninth Congress and by the Commission. Many other questions still have to be discussed, however, including issues of intrusion, protection of privacy and other rights, as well as the cost of new technologies versus their purported benefits.

3. Evaluation of crime-prevention programmes

50. In order to determine the effectiveness of crime-prevention measures, their evaluation must lie at the core of the discussions at the Tenth Congress. In several countries, State agencies and other actors that have implemented crime-prevention programmes have developed sophisticated methods for evaluating the effectiveness of the strategies adopted. Some of them rely on the success or failure rate—percentage of recidivists—after controlling for a possible displacement effect. Other means of evaluation include the calculation of potential savings made against the financial investment in a crime-prevention programme.

51. Such methods may perhaps not be appealing to many crime-prevention practitioners. The effectiveness of crime-prevention programmes is evaluated not only statistically, but also often in qualitative terms, as reflected in the reduction of fear and the lower perception of risk among the citizenry, as well as in the minimization of the intrusion caused by crime-prevention strategies into democratic freedoms. Careful analysis of new technologies in fighting crime must be subjected to the same stringent evaluations as those applied to other social programmes, such as vaccination campaigns or the approval of new medications.

52. At the international level, the question of effectiveness is even more problematic than at the domestic level because of the complex nature of cross-border criminality. In its resolution 1997/33, the Council noted the need to extend the concept of crime prevention to organized crime, terrorism, illegal trafficking in migrants, computer crime and cybercrimes, environmental crime, corruption and illegal commerce related to the acquisition and development of weapons of mass destruction. It also observed that the concept of crime prevention should take into account the growing internationalization of criminal activities while giving special consideration to the needs and concerns of developing countries.

53. Measuring the effectiveness of crime prevention in a constantly evolving and mutable environment will be a great challenge to the international criminal justice community. The sharing and exchange of information between States and within the international criminal justice community is an essential step in building effective crime-prevention strategies based on a comparative perspective.

4. Questions for discussion

54. The regional preparatory meetings may wish to consider the following questions:

(a) How have the changing dynamics and patterns of crime served as a catalyst for change in crime-prevention strategies? How do the globalization of trade and the developments in communication technology influence the patterns and dynamics of crime?

(b) How does migration influence crimes linked to xenophobia, racism and ethnic conflict? Are criminal justice statistics adequately reflecting such forms of crime, including the proportion of foreign offenders or victims involved in crime? What measures are taken to use statistics on crime control and its prevention as a mechanism for informing public opinion? What programmes have been instituted for the training of border officials in humane and effective immigration procedures and policies? What measures and actions have been taken by law enforcement agencies to reduce violence against migrants and ethnic populations? What effects have community policing strategies had in reducing ethnic violence?

(c) How can new technologies assist in crime prevention and law enforcement? For example, what are the effects of electronic fingerprinting on crime detection? Is it accepted as evidence by courts? What role does videoconferencing have to play? How does computer mapping of the incidence of crime influence police work? How does satellite technology assist in the investigation of domestic and transnational crime? How do new developments in firearms tracing and ballistics contribute to better crime investigation and prosecution of violent crime and in the illicit trafficking in firearms? How have DNA identification techniques changed police work?

(d) What are the implications of electronic surveillance on humane and efficient crime control and its prevention? What legal measures have been taken or may still be required to strengthen the right to privacy?

(e) What research and policy interest exists in carrying out evaluations of crime-prevention and criminal justice policies? How do evaluation studies of recidivism contribute to reforming criminal and penal policy? What experiences exist in identifying how certain penal and crime-prevention measures influence displacement of crime? What are the examples of successful projects combining statistical evaluative methods with practical crime prevention? Do studies measuring victimization and fear of crime among the citizenry contribute to modifications in policing styles and in the development of new crime-prevention techniques? How do new patterns and dynamics of transnational crime, including organized crime, influence the evaluation of the effectiveness of criminal and penal policies? How can cross-national review and mutual evaluation between States help in the process of evaluation?

D. Offenders and victims: accountability and fairness in the justice process

55. Criminal justice systems hold the offenders accountable for their criminal behaviour with consequences ranging from punishment, including the deprivation of liberty, to restorative justice approaches, which focus on conflict resolution.

56. In addition to the well-known problems associated with imprisonment, such as prison overcrowding and construction, high maintenance and personnel costs in custodial institutions, which have been discussed at length during previous United Nations congresses on the prevention of crime and the treatment of offenders, and problems in professional prison management, the criminal justice systems of many countries still focus on the public reaction to crime rather than on ensuring justice for the victim and the offender. The victim is often not adequately involved in the criminal proceedings and has to rely on outside assistance to redress the harm suffered.

57. Restorative justice approaches offer a framework for the re-establishment of social harmony through reconciliation between the offender and the victim, both inside and outside the criminal justice system, by reparation and mediation. It emphasizes conflict resolution between the victim, the offender and the community, and focuses on meeting needs and healing rather than on punitive reactions by the State.

58. To develop such a concept and facilitate the exchange of experience between States, the topic has been placed on the agenda of the Tenth Congress, on the recommendation of the Commission.

1. National level

59. In implementing restorative justice measures, it is essential that an appropriate balance between the needs and interests of the victim and the rights of the offender be ensured. Since restorative justice measures may help to overcome some of the problems associated with imprisonment, their enhanced use ought to be promoted, as appropriate, at the national level. At the international and regional levels, information on non-punitive and non-custodial measures should be provided, with a view to raising their acceptability by society, including criminal justice personnel, as such measures may be a sufficient response to crime in many instances.

60. The Tenth Congress may wish to discuss to what extent restorative justice approaches may be applied at various levels, with or without recourse to the criminal justice system, at the pre-trial stage (that is, investigation and prosecution) and during the trial and post-trial stages.

2. Investigation

61. Restorative justice measures, including mediation, are already applied at the initial stages of investigation in a number of countries, allowing for the reparation of damages and provision of compensation to the victim prior to trial. For that purpose, police officers are able, in appropriate cases, to initiate the application of victim-offender reconciliation measures, with monitoring mechanisms in place to avoid the danger of corruption and bribery. The application of restorative justice measures, particularly in cases of juvenile delinquency, requires police officers to provide complete information on such measures and programmes to both the victim and the offender at an early stage of the proceedings. Restorative justice measures are not to be limited to only petty offences. Restitution and victim-offender reconciliation are considered important factors in re-establishing social peace when dealing with violent crimes.

62. The responsibility of the community for solving conflicts linked to crime should be emphasized. While civil-law approaches designed to ensure justice, repair damage and provide restitution or compensation to the victim may be strengthened, conflict resolution should not become private business, but rather should proceed in the context of established alternatives to regular criminal proceedings. Such diversion away from the formal system into mediation and other community-based programmes can prove to be useful and adequate.

63. When carrying out restorative justice measures, the mediator ensures respect for the rule of law (including the principle of proportionality), as well as the protection of the rights of the offender and of the interests of the victim, bearing in mind that the two are not mutually exclusive: protection of the victim does not necessarily result in restrictions of the rights of the offender. Both the victim and the offender should have access to, *inter alia*, free interpretation, medical care and, when applicable, legal representation. Recently, in some countries, measures have been taken with a view to strengthening restorative justice in rural and urban areas, including improving professionalism in conflict resolution, both inside and outside the criminal justice systems.

64. Community-based and problem-solving policing, which are more sensitive to the pressing needs of the victim, need to be encouraged in order to avoid the risks of double victimization during the investigation through, for example, insensitive treatment or interviews. This is of particular importance when dealing with

victims of violent crimes, for which special police investigation training is necessary. Investigation of violent crimes, particularly against women and children, also requires sensitivity, including gender and children perspectives.

3. Prosecution

65. Effective conflict resolution may obviate the need for a formal prosecution, particularly when the successful application of restorative justice measures supports the prognosis that the offender will not commit further crimes. Investigating judges and prosecutors could encourage the offender and the victim to progressively move towards reconciliation, taking into account that the re-establishment of peace among the victim, the offender and the community may require a process of medium- or even long-term duration. The concept of restorative justice may result in a broadened scope of the function of a witness who, at the same time, is a victim of a crime. In the preparation for the trial hearing, the investigating judge or prosecutor should ensure adequate access to the court for the victim. The investigating judge and prosecutor should also provide the victim with all necessary information on his or her rights, as well as on existing victim assistance and compensation programmes and other services, such as medical treatment and protection in safe havens, for example, in women's shelters.

66. The implementation of restorative justice programmes should help to reduce heavy caseloads, and ensure that criminal justice systems deal only with cases where serious formal intervention by the system is required. The administration of criminal justice can thus concentrate on a limited number of cases, in which the suspects enjoy the benefits derived from the fundamental principles of a fair trial rather than being deprived of their freedom in pre-trial detention and, after months of detention, being released without a formal (trial) hearing.

67. Closer involvement of the community in criminal justice proceedings may have a direct impact on criminal justice policies. While a few criminal cases attract public attention, the vast majority of trials do not. The improved role of the media in reporting on trial hearings might be considered, with a view to: informing the public about the criminal justice system at work; raising public awareness of society's stake in effective crime prevention; and, at the same time, promoting respect for both the basic rights of the offender in criminal justice proceedings and the interests of the victim in the criminal justice system. However, some media reports are marked by sensationalism and a misperception of how the justice system operates. The responsibility of the media needs to be stressed in that connection, while, concurrently, public relations could be strengthened by the court administration.

68. Restorative justice measures may also be taken into consideration within the formal trial. In so-called adhesion proceedings, the claim of the victim for damages or reimbursement of expenses can be joined to the case brought by the State. The penal sentence *per se* can then include a ruling that would give the victim the legal right to judicial relief without having to sue the offender as plaintiff in a separate civil-law proceeding. At the same time, the obligation to compensate the victim may be taken into account, as part of the punishment, when deciding on the penalty for the offender. Yet another possibility could be a form of consensus sentencing as a useful means of promoting a restorative approach. Those processes are often in line with traditional forms of justice and conflict resolution in many countries.

69. When deliberating on the penalty, the court may also consider compensation as a mitigating factor. That would involve cases in which the offender has compensated the victim prior to trial or has started to do so.

70. Imprisonment usually creates a situation in which offenders are incapacitated and thereby unable to compensate victims, especially when, as a result of the deprivation of liberty, they are cut off from the outside world and gainful work opportunities. In order to allow sentenced offenders to provide reparation for victims,

a range of measures can be applied, including probation and work release, as well as community service, bearing in mind that non-custodial measures also help to alleviate prison overcrowding.

71. Another alternative to custody is electronic surveillance. While the installation of such surveillance systems might be costly, they will reduce the maintenance costs of incarceration in the long run, as well as helping to maintain the family life of the offender and community links and opportunities for gainful work. However, the use of electronic surveillance has to be carefully examined for possible violations of human rights in order to ensure that only those offenders are subject to surveillance who otherwise would be imprisoned, thereby avoiding so-called net-widening.

72. With regard to the deprivation of liberty, imprisonment should not deprive the offenders of the opportunity to provide reparation to victims. Provisions for meaningful and adequate remunerated work should rank high on the list of priorities of a prison administration, with potential employers playing a constructive role by offering offenders and ex-offenders appropriate possibilities for work.

73. In many cases, the sense of justice of the offender needs to be stimulated, including his or her own accountability for the crime committed. However, the sense of fairness of the offender can only be strengthened if the prison administration does justice to the offender, respecting the principle that prisoners are incarcerated as, but not for, punishment. Consequently, poor prison conditions that result in inhumane or degrading treatment are bound to undermine the sense of justice of the offender and reduce the motivation to change.

74. A restorative justice approach, which also aims at preventing recidivism, requires strengthened efforts to provide adequate mental and physical treatment for offenders and pre-release assistance programmes in preparation for the reintegration of the offender into society. That includes job-related training programmes in prisons, with a view to securing the economic independence of prisoners once released. As many countries face high unemployment rates, treatment programmes should also aim at providing strategies for ex-offenders to cope with unemployment and to enhance their skills in a competitive job market.

75. Community involvement in custodial institutions is an important means of ensuring that prisoners maintain contacts with the outside world. In many institutions, prison officers believe that such contacts may undermine or endanger prison security and order. There are, however, positive examples which show that prison visitors, religious groups and other relevant organizations can assist in meeting the goals of imprisonment, helping offenders to lead law-abiding lives after their release. Victims wishing to visit offenders in prison could be assisted by prison professionals in establishing a basis for victim-offender reconciliation.

76. Attention should be devoted to promoting systematic efforts to strengthen regional and international cooperation in such a process. Restorative justice measures and the strengthening of restorative processes could be part of broader development programmes, taking into account the special needs of developing countries and their indigenous traditions, which have relied on customary forms of restorative justice. Traditional conflict resolution practices may offer advantages over other methods in the context of efforts to build upon such traditions to develop an effective capacity to deal with violence, crime and conflicts in society.

77. Restorative justice policies offer several comparative advantages. Their application would allow the criminal justice system to be used more efficiently, concentrating its efforts and limited resources on more serious offences, thus contributing to reducing the prison population, easing prison overcrowding and, consequently, diminishing the maintenance costs for prisons. By allowing offenders to stay with their families and continue their social and professional activities, it might be possible to help the offender to readjust to society and to avoid the economic hardship posed for single-parent families. The burden of assisting the offenders and their families would then not fall on the social security schemes, where they exist, or on the informal social network, such as relatives, neighbours and friends. Moreover, the working potential of offenders

could be utilized in the public and private sectors, for instance, by community service and social work initiatives. In the long run, the use of restorative justice measures would be of double benefit for the development process of a country: by avoiding the disruption of valuable human and material resources; and by stimulating economically productive activities. A properly functioning criminal justice system and the use of fair restorative justice measures would also contribute to increased confidence in the stability and efficiency of the criminal justice system and an enhanced climate of security, which may be a decisive element in spurring foreign investment and international technical assistance.

78. A balanced approach offers the best prospects, ensuring that the rights of the offender, as recognized in international and regional instruments (that is, the Standard Minimum Rules for the Treatment of Prisoners[2] and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110, annex)), and the rights of the victims, as highlighted and provided for in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), are adequately respected.

79. A guide for policy makers on the implementation of the Declaration and a handbook on justice for victims, concerning the use and application of the Declaration, have recently been drawn up by the Centre for International Crime Prevention to assist in developing victim-sensitive policies, procedures and protocols and in executing victim services programmes. Accordingly, wide dissemination of both the guide and thehandbook should be strongly promoted. There is a need to strengthen technical assistance activities, in particular, the development of training programmes on the use and application of the Declaration. The wide dissemination of the handbook for practitioners and the guide for policy makers could be part of a general process of developing professional training and techniques for public education on the need for restorative justice for the victim and offender alike. Other techniques would include wider media involvement and public relations campaigns based on ethical codes of practice and using new information technologies, such as multimedia presentations and the Internet.

80. Attention should also be given to the provision of appropriate international recourse and redress for victims where national channels may be insufficient, for instance, in cases involving transnational crime. Recourse and redress at the international level could be obtained through the appointment of an international ombudsman. Alternatively, the existing human rights complaint procedures could be expanded with a view to restoring impeded rights or otherwise obtaining some kind of redress. A positive development has been the establishment of victim and witness units in the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandese Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994. The establishment of such a unit within the structure of the future International Criminal Court has also been proposed. The Tenth Congress may wish to make suggestions in order to support the recommendation of the eighth and ninth congresses and of expert group meetings for the establishment of an "international fund for crime victims", which would provide compensation to victims of crime and abuse of power.

81. At the regional level, victim policies formulated within the framework of existing structures of cooperation, for example the Council of Europe and the regional courts of human rights (such as the Inter-American Court of Human Rights) could be adopted in other regional initiatives. In that context, the regional institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network should be further strengthened in their victim-related activities at the regional and subregional level. Those activities could include comparative surveys and evaluation studies, as well as model projects and demonstration schemes

for technical assistance. Emphasis should also be placed on the importance of cooperation with non-governmental organizations involved in such activities.

82. The Tenth Congress could provide a forum to facilitate the exchange of information and experiences on different restorative justice measures that have proved successful, with emphasis on how a proper balance between the interests of victims and the rights of offenders can be ensured. Information on promising practices and legislation on victim-related issues should continue to be included in the database and clearing-house efforts to provide a continuing service for both government agencies and non-governmental organizations, including victim groups.

4. Questions for discussion

83. The regional preparatory meetings may wish to consider the following questions:

(a) What are the major elements required to ensure a balance between the rights and interests of the offender, the victim and the society?

(b) To what extent can conflict resolution contribute to maintaining a healthy relationship between the victim, the offender and society?

(c) What options can be envisaged to increase the adequacy of criminal justice responses to crime, as well as the efficacy and responsiveness of criminal justice systems, taking into account the number of cases to be dealt with by the justice systems, the duration of proceedings, the proportionality of criminal justice responses and the availability of alternative measures of conflict resolution both inside and outside the criminal justice systems?

(d) What measures are applied in order to increase the transparency of criminal justice proceedings and thus enhance confidence in the criminal justice system among the partners involved in that process and the public at large?

(e) To what extent can the professional interests of the mass media be involved in crime-prevention strategies in such a way as to ensure greater fairness and better accountability?

(f) How can restorative justice measures be developed and applied in the context of development, democratization and post-conflict reconstruction?

(g) What can be done at the international and regional levels regarding:

(i) The strengthening of international cooperation to promote restorative justice, taking into account the potential benefits and constraints?

(ii) Offenders' and victims' rights?

(iii) The development of international means of recourse and redress for victims where national channels may be insufficient, in particular in cases involving transnational crime and abuse of power?

(h) How can technical assistance be strengthened so as to ensure greater fairness and accountability within the criminal justice system, including restorative justice measures?

Notes

[1]*Official Records of the Economic and Social Council, 1997, Supplement No. 10* (E/1997/30), para. 75.

[2]See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.94.XIV.1), vol. I, part 1, sect. H.

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TENTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Draft discussion guide for the regional preparatory meetings for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

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INTRODUCTION

1. The quinquennial United Nations congresses on the prevention of crime and the treatment of offenders have been organized since 1955, in pursuance of General Assembly resolution 415 (V) of 1 December 1950. Pursuant to General Assembly resolution 46/152, on the creation of an effective United Nations crime prevention and criminal justice programme, the United Nations congresses, as a consultative body of the programme, are to provide a forum for:

(a) The exchange of views between States, intergovernmental organizations, non-governmental organizations and individual experts representing various professions and disciplines;

(b) The exchange of experiences in research, law and policy development;

(c) The identification of emerging trends and issues in crime prevention and criminal justice;

(d) The provision of advice and comments to the Commission on Crime Prevention and Criminal Justice on selected matters, as requested by the Commission;

(e) The submission of suggestions for the consideration of the Commission regarding possible subjects for the programme of work.

2. The General Assembly, in its resolution 52/91, on the preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, adopted on the recommendation of the Commission at its sixth session, decided on the substantive items to be included in the provisional agenda for the Tenth Congress, as well as on the topics for the workshops. In the same resolution, the Assembly requested the Secretary-General to prepare a discussion guide for the consideration of the Commission, in cooperation with the institutes for the prevention of crime and the treatment of offenders affiliated with the United Nations, and invited Member States to be actively involved in that process.

3. The items to be included in the provisional agenda of the Tenth Congress, as approved by the General Assembly, are:

(a) Promoting the rule of law and strengthening the criminal justice system;

(b) International cooperation in combating transnational crime: new challenges in the twenty-first century;

(c) Effective crime prevention: keeping pace with new developments;

(d) Offenders and victims: accountability and fairness in the justice process.

4. The issues for the four workshops are:

(a) Combating corruption;

(b) Crime related to the computer networks;

(c) Community involvement in crime prevention;

(d) Women in the criminal justice system.

5. Further, the Assembly decided to reserve the first two days of the plenary session at the Tenth Congress primarily for statements by representatives at a high political level on the main themes of the Congress, and requested the Secretary-General to prepare an overview of the worldwide state of crime and criminal justice for presentation at the opening of the Congress.

6. The present discussion guide is intended to stimulate discussion of matters of major concern to the international community, with a view to identifying the main policy options for consideration by the Congress.

I. PROMOTING THE RULE OF LAW AND STRENGTHENING THE CRIMINAL JUSTICE SYSTEM

7. In the last decade, many developing States have embarked on constitutional reforms, the creation of new institutions, the promotion of respect for human rights and pluralist elections that support the participation of civil society in governance. At the same time, most eastern European States and some Asian States are experiencing a transition to a market economy. The growing political openness, linked to the trend towards democratization of institutions and liberalization of socio-economic policies, has created a favourable environment for development activities aimed at strengthening the rule of law.

8. With the emergence of new democracies during the 1990s, technical cooperation has focused on good governance—the capacity of Governments to deliver quality public services to their populations and to maintain the rule of law. The criminal justice systems of many countries have experienced great difficulty in dealing with the upsurge of crime in the wake of major political changes and the resulting economic dislocation. The vacuum created by institutional breakdowns and dwindling social controls has allowed organized crime to establish itself, for example, through racketeering, prostitution, drug trafficking, fraudulent schemes and misuse of public funds. Endemic corruption and mismanagement have undermined much development assistance and endangered international investments. The situation has become so critical in a number of countries that the capacity of the government to control crime has become a major test of its viability. As a result, since the early 1990s, the international community, increasingly conscious of the need for a stable legal framework for development, has more systematically incorporated activities focusing on justice and the rule of law in its development assistance.

9. The discussion of this topic should centre on the efforts made to strengthen criminal justice systems and the rule of law under new conditions. The Tenth Congress could serve as a platform for a stocktaking of technical assistance offered at both bilateral and multilateral levels and for identifying the areas where assistance is most needed. It could also offer guidance on the future directions for technical cooperation, while considering the most successful prototype assistance projects for strengthening the rule of law and steps that could be taken to increase the number of such projects.

10. The needs, as expressed by Member States, are many. Very often, developing countries face difficulties in coping with the rapid political and socio-economic changes and increasing sophistication of crime, requesting assistance in the revision or formulation of new legislation. Legal reform, including new penal and procedural codes, ranks high on the list, as does special legislation to deal with particular problems, such as corruption, organized crime, and money-laundering. Many developing countries and States with economies in transition are in need of technical assistance in building or reforming their crime-prevention and criminal justice systems. Because of the lack of funds, government agencies responsible for crime prevention and criminal justice are often understaffed and lack both modern training and appropriate equipment. Assistance is often requested for the improvement of some aspects of criminal justice operations, such as the professionalism of police forces and the independence of the judiciary. Correctional needs include alternatives to overcrowded prisons. Other needs expressed relate to the lack of both material of all kinds and the training to handle specialized equipment. Many States seek advice and assistance in dealing with mounting juvenile delinquency and the treatment of juvenile offenders.

A. Towards a multilateral and results-oriented approach

11. The importance of respect for the rule of law and its role in contributing to sustainable development are recognized by the United Nations as well as other entities and international organizations. In its resolution 46/152, annex, section I, the General Assembly recognized that "democracy and a better quality of life can flourish only in a context of peace and security for all. Crime poses a threat to stability and to a safe environment. Crime prevention and criminal justice, with due regard to the observance of human rights, is thus a direct contribution to the maintenance of peace and security ...". In the same resolution, which represented the culmination of a long process of reviewing the United Nations Crime Prevention and Criminal Justice Programme, the General Assembly encouraged "all developed countries to review their aid programmes in order to ensure that there is a full and proper contribution in the field of criminal justice within the overall context of development priorities".

12. Effective international cooperation in crime prevention and criminal justice depends, in the first instance, on the capacity of the criminal justice system of a given country to deal adequately with the crime problems that exist or are likely to occur. Raising the level of expertise and professionalism of the criminal justice system often requires resources that are lacking in many countries.

13. Among its goals, technical cooperation in crime prevention and criminal justice should lead to the adoption of strategic measures at the national level to curtail mounting problems, such as that of organized crime, as well as to promote effective mechanisms for regional cooperation based on judicial cooperation and police arrangements between States, with an exchange of information and experience in all crime-related areas.

14. International cooperation includes a wide range of activities, such as assistance in updating obsolete criminal codes; drafting and reforming legal provisions on specific issues; the reorganization of key agencies, such as ministries of justice and of the interior, police forces and judiciary and penitentiary institutions; training of criminal justice personnel to improve their technical capacities and upgrade their level of professionalism; mutual assistance in criminal matters; support of computerization programmes; and the protection of, and assistance to, victims of crime and abuse of power.

15. International cooperation and technical assistance in crime prevention and criminal justice is currently being provided bilaterally by Governments and through a number of intergovernmental organizations and international development agencies and funds (for example, the United Nations Development Programme,* the World Bank, the regional development banks, in particular the Inter-American Development Bank, the Commonwealth Secretariat, the Council of Europe and the European Union), as well as through a variety of national and international non-governmental organizations. Within the United Nations Secretariat, in addition to the Centre for International Crime Prevention, several other entities, such as the Department of Peacekeeping Operations, the Department of Economic and Social Affairs, the Office of the United Nations High Commissioner for Human Rights, the United Nations International Drug Control Programme and the regional commissions provide assistance in their respective fields of competence. The United Nations Interregional Crime and Justice Research Institute (UNICRI) and bodies such as the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the European Institute for Crime Prevention and Control, affiliated with the United Nations, and the African Institute for the Prevention of Crime and the Treatment of Offenders engage in the collection and dissemination of relevant information, research and training, as well as the promotion of collaborative action with regard to problems of common concern.

16. There are a number of advantages of multilateral assistance, especially when rendered through the United Nations. It provides a unique forum for raising public awareness and building the consensus needed for concerted action. Its neutrality permits the United Nations to develop special relationships of trust with countries and their people and to provide stable, long-term capacity-building assistance free of short-term political or economic advantages or other considerations. Its programming of development assistance according to the needs of the countries concerned and its universal presence, with a network of country and regional offices, enable the United Nations to operate effectively at the country level. Finally, Member States require assistance based on the broadest possible experience and on a range of options, so as to adapt successful solutions to specific national, legal, social and cultural circumstances. Such broad experience and options are generally not available when bilateral assistance is given.

B. Technical assistance in post-conflict reconstruction

17. The experience acquired in the most recent United Nations peacekeeping operations suggests that the criminal justice system is among the institutions that suffer the most in conflict situations. The criminal justice system is often rendered subservient to political power, and when it appears resistant to the attainment of unlawful objectives, it invariably becomes a prime target for dismantlement or destruction. Success in rebuilding a country after external or intra-State conflicts depends largely on the re-establishment of the rule of law, with an adequate level of security for all citizens. The rehabilitation of a criminal justice system capable of ensuring the maintenance of law and order, with due consideration for the protection of civil rights and basic freedoms, has therefore become one of the top priorities.

18. The proscription of violence against persons and, especially, of systematic crimes against humanity needs to be properly enforced. Crimes of a transnational and organized character are most likely to spread in the

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*Among the agencies referred to, UNDP has in recent years pursued policies that emphasize capacity development for effective governance, as a priority means of supporting the goals of poverty eradication, environmental improvement, gender equity and sustainable livelihoods. Particularly relevant, within the framework of UNDP efforts aimed at promoting and supporting good governance, are the activities of the Regional Bureau for Europe and the Commonwealth of Independent States, which implements a regional programme to support the strengthening of democracy, governance and participation. In the early 1990s, UNDP sponsored some reforms of legislative and judicial systems in response to demands from the States concerned. Since 1994, UNDP has devoted a significant portion of its resources to good governance. Over $44 million were allocated to 62 projects in that area; since 1996, such activities have increased substantially.

context of armed conflict during the transition to peace. Without the necessary law enforcement mechanisms and infrastructures, societies subjected to conflicts may become safe havens for criminal organizations, both national and transnational. Unfortunately, lawlessness, banditry, smuggling and victimization of innocents usually accompany war. In addition to the creation of international mechanisms of crime control and criminal justice (war tribunals), it is crucial that national and local criminal justice institutions be made to work, so that justice can be done (and be seen to be done), under the rule of law, while serving also as a means of promoting public confidence and social cohesion. Consideration could be given to indigenous approaches to reconciliation, including the opportunity to use elements of traditional forms of justice.

C. Questions for discussion

19. The regional preparatory meetings may wish to consider the following questions:

(a) What types of technical assistance are needed in crime prevention and criminal justice to promote the rule of law, including in post-conflict reconstruction? How can they be best provided by the United Nations Crime Prevention and Criminal Justice Programme?

(b) On the basis of past experience, what approaches would be successful in establishing the elements of an effective and fair criminal justice system, including the police and the judiciary?

(c) How have the results of technical assistance projects and their impact on the establishment and maintenance of a stable legal framework for crime prevention and criminal justice been evaluated, and how can this evaluation be improved?

II. INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME: NEW CHALLENGES OF THE TWENTY-FIRST CENTURY

20. Recent years have witnessed an increase in transnational crime, which has taken on new characteristics, as reflected particularly in organized transnational crime. The emergence of new forms of transnational alliances between organized criminals calls for an effective response. The interaction between the research and academic environment and political institutions at the national, regional and global levels has started to bear fruit, though still at a slow pace. The need to give practical effect to the achievements of the international community in enacting new laws and regulations designed to combat crime should be pursued, so as to strengthen the rule of law. In particular, the problems arising from transnational organized crime require that legal and criminological expertise be applied to strengthen security, taking into account other needs of human beings and the society at large, with a view to creating better laws and more user-friendly criminal justice institutions.

21. The focus of the Congress should be placed on practical tools and practical forms of cooperation in the prevention and control of contemporary forms of transnational crime. The discussion should seek to identify ways of building up expertise, developing training tools and collecting best practices worldwide. The issues outlined below have been identified as being of particular relevance to the Tenth Congress.

A. Convention against organized transnational crime

22. The General Assembly, in its resolution 51/120, requested the Commission on Crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of an international convention against organized transnational crime. The inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime, in the report of its meeting held at Warsaw from 2 to 6 February 1998, noted the

following: "There was a broad consensus on the desirability of such a convention ... There was much to be gained from this international legal instrument, which would not only build on, but also go beyond, other successful efforts to deal with pressing issues of national and international concern ... There was unreserved confirmation of the commitment of the international community to devote priority attention to developing such a convention and ensuring its full implementation" (E/CN.15/1998/5). Further work on the draft convention was carried out by the Commission at its seventh session, and was to be continued at a meeting of the inter-sessional group of experts to be held at Buenos Aires from 31 August to 4 September 1998. In case the Commission completes its work on the proposed convention, the Congress could function as a platform for discussion of the most viable modalities for implementation of the various provisions of the convention. The Congress may also wish to examine existing international law and legislation that could be of benefit in that regard. At the same time, national legislation, both substantive and procedural, could be analysed to verify its capacity to meet the requirements of such an international instrument.

B. Action against organized transnational crime

23. Practical measures that would help law enforcement officials in preventing and controlling organized transnational crime could be discussed, including international cooperation in the inspection of crime scenes, the gathering of evidence and criminal techniques. Further, methods for gathering and analysing operational data on transnational crime could be developed. The relationship between organized crime and the development of tension and civil strife needs to be examined in order to verify the extent to which organized crime can provoke tension and civil conflicts.

C. Extradition and mutual legal assistance

24. The Congress could facilitate the discussion of problems relating to mutual assistance in criminal cases and in extradition. The model treaties are well-tested instruments of international cooperation and, as such, are part of the wider efforts to prevent and control organized transnational crime and strengthen regional and international cooperation in law enforcement and judicial proceedings. The Congress can benefit from the presence of legal experts and policy makers by conducting a dialogue conducive to the refinement of existing, and the elaboration of new, instruments for cooperation in criminal justice, for example, by consolidating the model treaties into a comprehensive instrument for international cooperation. The feasibility of creating international mechanisms for the settlement of extradition disputes could be explored. Internationally recognized principles embodied in existing conventions could be reviewed. Model legislation on mutual legal assistance could be elaborated, which, together with the model legislation on extradition, could be used as an efficient tool to improve international cooperation in criminal matters. Technical assistance activities in that area, focusing on training and advisory services, could include the promotion of techniques for the upgrading of skills. Further, the Congress could provide an opportunity to explore the feasibility of alternatives to formal extradition by simplifying extradition procedures.

D. Other international cooperation and technical assistance

25. Generally, with regard to technical assistance in promoting efforts to combat organized transnational crime, the Congress should be a propitious occasion for policy makers to identify areas for the elaboration and development of universal legal tools (that is, model laws, declarations and manuals) and of practical strategies to assist requesting countries, particularly developing countries, economies in transition and countries recovering from conflict, in preventing and controlling organized criminal activities. Those instruments should be designed in such a way that they could be implemented worldwide, with the requisite modifications and adaptations. The feasibility of establishing a coordination and cooperation mechanism between the relevant international organizations and the private sector could also be studied, in order to provide better and more effective technical assistance at reduced costs; to expand the scope and context of technical assistance; to

develop uniform criteria for the provision of assistance and the evaluation of its results; and to make the provision of technical assistance more uniform and systematic.

E. Measures against specific forms of crime

1. Terrorism in all its forms

26. Terrorism is a global threat to national and international security, introducing a random violence that challenges the ability of States to protect their citizens. As terrorism transcends national boundaries and changes its patterns and methods of operations, making full use of modern technologies, no region or country remains immune. The General Assembly has made substantial progress in formulating guidelines to promote international cooperation in combating terrorism in all its forms and dimensions. On the basis of such progress and other initiatives undertaken at various levels, the Congress should examine practical ways of strengthening national action and promoting international cooperation, in particular, by establishing close collaborative ties between law enforcement agencies, developing practical arrangements and organizing training courses and seminars on how to deal with specific aspects of terrorism nationally and internationally. The Congress can also provide inputs on how to assist Member States in improving their capabilities to prevent, investigate and effectively respond to terrorist attacks.

2. Money-laundering

27. The Congress could serve as a platform for the discussion of practical measures for the prevention and control of money-laundering. Discussions could be held on areas of technical assistance in support of the implementation of the global programme against money-laundering of the Office for Drug Control and Crime Prevention of the Secretariat (including training courses, advisory services and examples of best practice). Measures required to respond to new developments in money-laundering in the age of high technology could be highlighted, in particular, how the new high technology creates alternatives to, and loopholes for, money-laundering. Related issues that could be discussed in this connection involve collaborative methods for the tracing and seizure of assets, including bank secrecy and international asset-sharing, as well as practical measures, such as the exchange of data, information and experience, to deter, detect and prosecute economic and financial crimes. In addition, other ways of ensuring financial disclosure, transparency and accountability could be discussed.

3. Corruption

28. Regarding corruption, the Congress could provide a forum for discussion on the basis of the International Code of Conduct for Public Officials (General Assembly resolution 51/59, annex), the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191, annex) and the 50 recommendations of the Expert Group Meeting on Corruption, held at Buenos Aires from 17 to 21 March 1997 (E/CN.15/1997/3/Add.1). Modalities of a plan for the practical application of mechanisms against corruption could be discussed. Technical assistance proposals to support the application of those mechanisms, in particular, training courses, advisory services and examples of best practice, could be elaborated. Model regulatory regimes could be developed and banking rules formulated. Legal mechanisms to control overseas corruption, particularly in private business, could be suggested. Administrative and civil remedies as alternatives to criminal sanctions could be considered, in order to relieve the criminal justice system from the burden of corruption cases, reserving penal measures for high-level offenders. The involvement of the public at large could be addressed, for example, through information and awareness-raising campaigns on the negative impact of corruption on the well-being of society and on national development. Another issue for consideration could be the combating of corruption by criminalizing bribery, as recommended by the General Assembly.

4. Environmental offences

29. In respect of the role of criminal law in the protection of the environment, the presence of policy makers and international experts at the Congress could provide an opportunity to exchange views on the creation of practical mechanisms to ensure that the problem of environmental crime is dealt with in a cohesive manner, so as to avoid cases in which corporations or individuals look for countries with weak or unenforced environmental legislation of which they could take advantage. The creation of an international platform to coordinate action in the fight against environmental crime could be considered. Such a platform would provide an opportunity to exchange information, to carry out crime analyses and to provide for coordinated international criminal legislation on the environment by formulating generally recognized principles that could be embodied in an international convention. The preparation of a manual for law enforcement and customs officers on how to detect and deter the trafficking in hazardous substances, and of a manual for law enforcement officials on how to detect and deter the smuggling of endangered species might be envisaged. The Congress should encourage such initiatives and suggest ways of promoting cooperation on such issues.

5. Trafficking in nuclear substances

30. With regard to trafficking in nuclear substances, including real or purportedly radioactive substances, as well as rare metals and rare earths, policy makers at the Congress could explore the feasibility of undertaking an in-depth analysis of nuclear crime, including issues such as the amount of radioactive material on the market, the availability of weapons-grade fissionable material, where it comes from and whether there is an actual market for it, as well as the use of radioactive material by parties other than Governments.

6. Car theft

31. The Congress will provide an opportunity to examine the progress made in the elaboration of a manual for law enforcement officials on combating car theft, and its use in training courses. A comprehensive worldwide study of that widespread form of crime could be envisaged to complement the findings and recommendations of the meetings held on the subject and to determine the feasibility of establishing mechanisms for coordinated action to combat crime involving motor vehicles.

7. Trafficking in human beings

32. Trafficking in human beings is a very serious problem facing the international community. Currently, such trafficking is considered to be the fastest growing criminal market worldwide. The problem is seen to consist of the following three major components: the illegal smuggling of aliens, sexual slavery of women and children, and economic slavery in all its forms. In assessing effective countermeasures, the Congress may wish to consider recommending the formulation and implementation of technical assistance projects aimed at assisting States in their efforts to respond to this phenomenon.

F. Questions for discussion

33. The regional preparatory meetings may wish to consider the following questions:

(a) In view of the prospective international convention against organized transnational crime, what mechanisms should be envisaged at the national and international levels to give effect to its various provisions?

(b) What measures would be most effective for the United Nations to adopt in responding to the needs of countries for technical assistance in strengthening national capacities for dealing with transnational crime?

(c) How can regional and international cooperation in the field of crime prevention and criminal justice best contribute to combating terrorism?

III. EFFECTIVE CRIME PREVENTION: KEEPING PACE WITH NEW DEVELOPMENTS

34. Over the past two decades, the international criminal justice community has increasingly focused its attention on identifying, developing and evaluating measures to prevent crime. That process, which received fresh impetus in reaction to the contention that "nothing works", has continued and yielded results suggesting that there are some effective crime-prevention measures based on traditional concepts (such as strengthening the role of the family and encouraging formal education). Other innovative measures are based on technological developments that permit the criminal justice community to react in a timely and effective manner to new crime situations. Indeed, especially in the last decade, keeping pace with new developments in crime and its prevention has become a major priority for many Governments and a real challenge to law enforcement and other crime-prevention practitioners.

35. The changing dynamics and patterns of crime have served as a catalyst for the shift in approach. While new information technologies enabling better communication (for law-abiding citizens and offenders alike) are essentially limited to developed countries, the relatively brief period between the ninth and tenth United Nations congresses on the prevention of crime and the treatment of offenders has seen a tremendous expansion in that regard. However, while the proliferation of new information technologies has led to a number of advantages in global communication and cooperation, it has also helped to foster new forms of crime domestically, regionally and internationally.

36. The Economic and Social Council noted those developments in its resolution 1997/33, adopted on the recommendation of the Commission at its sixth session, to which was annexed the text of elements of responsible crime prevention: standards and norms. In section I of that text, it was noted that "the concept of crime prevention should not be limited to conventional forms of crime, ... but should encompass new forms of crime, such as organized crime, terrorism, illegal trafficking in migrants, computer and cybercrimes, environmental crime, corruption and illegal commerce related to the acquisition and development of weapons of mass destruction ... The concept of crime prevention should take into account the growing internationalization of criminal activities between the global economy, advanced technologies and national phenomena of crime, with special consideration for developing countries."

A. Crimes linked to xenophobia, racism and ethnic conflict

37. Among the major concerns, rising xenophobia, racism and intolerance towards different ethnic groups have been viewed as presenting the greatest challenge. The erosion of once rigid borders and systems and the globalization of trade has prompted changes in domestic and international labour markets, with the inevitable migration of people seeking better work and life opportunities. Migration from South to North and migration caused by different levels of socio-economic development have produced problems of crime prevention and control in receiving countries. Great challenges for Governments have emerged with regard to the protection of the rights of immigrants and migrants who, because of their possibly illegal status, may become offenders, but who are more often victims. Xenophobia and racial hatred, including anti-semitism, have fuelled interpersonal and collective violence, while fostering criminal opportunities involving either members of organized crime networks or victims of organized criminals who take advantage of particular groups (for example, through demands for protection money or through corrupt officials who demand bribes for issuing work and residence permits).

38. The International Conference on Migration and Crime, convened at Courmayeur, Italy, in October 1996 by the International Scientific and Professional Advisory Committee in cooperation with the United Nations and the Government of Italy, analysed various aspects of the relationship between the two phenomena and suggested some parameters for action. The United Nations Crime Prevention and Criminal Justice Programme has addressed both aspects in a number of policy statements and related practical actions aimed at promoting the rule of law, training law enforcement officials and changing public attitudes to promote greater tolerance of multiculturalism and readiness for sound integration. However, the Commission at its sixth session noted that the authorities themselves were often the culprits: "... violence against migrants was becoming an increasingly serious problem ... Crimes were often committed against such persons by immigration authorities. It was recommended that due attention should be paid by States to the prevention and sanctioning of that form of abuse of power. Immigration laws should focus more on the network of criminal organizations involved in trafficking in migrants than on the punishment of migrants with no legal status ... It was pointed out that repatriation procedures should prevent situations that might endanger the integrity, dignity and human rights of migrants."[1]

39. Crime-prevention measures and techniques should include legal, sociopolitical and economic interventions aimed at preventing crimes and abuses linked to xenophobia and racism, including settlement and resettlement programmes for migrants, media campaigns to foster tolerance and multiculturalism, education programmes aimed at preventing aggressive behaviour towards foreign children, ethnic policing and situational prevention of public disorder.

B. New technologies

40. The globalization of communications and improved information management have facilitated new forms of crime, with potentially far-reaching consequences for crime prevention. In the developed world, many individuals use modern information technologies (such as cellular telephones and the Internet) to remain connected to the community and to enhance security. In developing countries, where telephone lines are still largely lacking, tight family control and support still secure a basic feeling of safety, which may, however, weaken as information dissemination expands and reaches that portion of the world's population.

41. At the time of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a new form of non-custodial sanction, electronic monitoring, was being implemented in several developed countries. Shortly thereafter, situational crime prevention benefiting from further advances in information technologies, including satellite monitoring, closed-circuit television, firearms tracing and ballistics cross-referencing and electronic most-wanted bulletin boards, have been introduced with positive results and potential applications in other parts of the world. A further example is provided by recent developments in the use of DNA evidence, which have helped to convict offenders while allowing a mechanism for establishing innocence during the trial.

42. For example, some jurisdictions in the United States of America have well-established satellite monitoring of offenders serving non-custodial sanctions. Satellite technology has already been applied by the automobile industry to prevent the theft of motor vehicles or facilitate the recovery of stolen vehicles that transmit signals making it possible to determine their location. Further advances have been made in fingerprinting technology, so that it is now possible for a police officer to transmit electronically the image of a fingerprint to a central database for processing, and to facilitate the possible arrest or detention of the offender. Highly advanced marking systems have been introduced in the production of currency, making counterfeiting extremely difficult. Other technological advances are on the way to facilitate crime prevention.

43. As such information technologies are perfected and made available to a greater number of countries, their widespread use will follow. But there remain basic questions of a legal, research or programme planning nature, some of them having been noted by the Ninth Congress and by the Commission. Many other questions still have

to be discussed, however, including issues of intrusion, protection of privacy and other rights, as well as the cost of new technologies versus their purported benefits.

C. Evaluation of crime-prevention programmes

44. In order to determine the effectiveness of crime-prevention measures, their evaluation must lie at the core of the discussions at the Tenth Congress. In several countries, State agencies and other actors that have implemented crime-prevention programmes have developed sophisticated methods for evaluating the effectiveness of the strategies adopted. Some of them rely on the success or failure rate—percentage of recidivists—after controlling for a possible displacement effect. Other means of evaluation include the calculation of potential savings made against the financial investment in a crime-prevention programme.

45. Such methods may perhaps not be appealing to many crime-prevention practitioners. The effectiveness of crime-prevention programmes is evaluated not only statistically, but also often in qualitative terms, as reflected in the reduction of fear and the lower perception of risk among the citizenry, as well as in the minimization of the intrusion caused by crime-prevention strategies into democratic freedoms. Careful analysis of new technologies in fighting crime must be subjected to the same stringent evaluations as those applied to other social programmes, such as vaccination campaigns or the approval of new medications.

46. At the international level, the question of effectiveness is even more problematic than at the domestic level because of the complex nature of cross-border criminality. In its resolution 1997/33, the Council noted the need to extend the concept of crime prevention to organized crime, terrorism, illegal trafficking in migrants, computer crime and cybercrimes, environmental crime, corruption and illegal commerce related to the acquisition and development of weapons of mass destruction. It also observed that the concept of crime prevention should take into account the growing internationalization of criminal activities while giving special consideration to the needs and concerns of developing countries.

47. Measuring the effectiveness of crime prevention in a constantly evolving and mutable environment will be a great challenge to the international criminal justice community. The sharing and exchange of information between States and within the international criminal justice community is an essential step in building effective crime-prevention strategies based on a comparative perspective.

D. Questions for discussion

48. The regional preparatory meetings may wish to consider the following questions:

(a) Are criminal justice statistics adequately reflecting crimes related to xenophobia, racism and ethnic conflict, including the proportion of foreign offenders or victims involved in crime? What measures are taken to use statistics on crime control and its prevention as a mechanism for informing public opinion? What programmes have been instituted for the training of border officials in humane and effective immigration procedures and policies? What measures and actions have been taken by law enforcement agencies to reduce violence against migrants and ethnic populations? What effects have community policing strategies had in reducing ethnic violence?

(b) How can new technologies assist in crime prevention and law enforcement? For example, what are the effects of electronic fingerprinting on crime detection? Is it accepted as evidence by courts? What role does videoconferencing have to play? How does computer mapping of the incidence of crime influence police work? How does satellite technology assist in the investigation of domestic and transnational crime? How do new developments in firearms tracing and ballistics contribute to better crime investigation and prosecution of

violent crime and in the illicit trafficking in firearms? How have DNA identification techniques changed police work?

(c) What are the implications of the new technologies, including electronic surveillance, for humane and efficient crime control and its prevention? What legal measures have been taken or may still be required to strengthen the right to privacy?

(d) How can crime prevention strategies, including their evaluation, be improved in order to achieve a more effective criminal policy?

IV. OFFENDERS AND VICTIMS: ACCOUNTABILITY AND FAIRNESS IN THE JUSTICE PROCESS

49. Criminal justice systems hold the offenders accountable for their criminal behaviour with consequences ranging from punishment, including the deprivation of liberty, to restorative justice approaches, which focus on conflict resolution.

50. In addition to the well-known problems associated with imprisonment, such as prison overcrowding and construction, high maintenance and personnel costs in custodial institutions, which have been discussed at length during previous United Nations congresses on the prevention of crime and the treatment of offenders, and problems in professional prison management, the criminal justice systems of many countries still focus on the public reaction to crime rather than on ensuring justice for the victim and the offender. The victim is often not adequately involved in the criminal proceedings and has to rely on outside assistance to redress the harm suffered.

51. Restorative justice approaches offer a framework for the re-establishment of social harmony through reconciliation between the offender and the victim, both inside and outside the criminal justice system, by reparation and mediation. It emphasizes conflict resolution between the victim, the offender and the community, and focuses on meeting needs and healing rather than on punitive reactions by the State.

52. To develop such a concept and facilitate the exchange of experience between States, the topic has been placed on the agenda of the Tenth Congress, on the recommendation of the Commission.

A. Restorative justice

53. In implementing restorative justice measures, it is essential that an appropriate balance between the needs and interests of the victim and the rights of the offender be ensured. Since restorative justice measures may help to overcome some of the problems associated with imprisonment, their enhanced use ought to be promoted, as appropriate, at the national level. At the international and regional levels, information on non-punitive and non-custodial measures should be provided, with a view to raising their acceptability by society, including criminal justice personnel, as such measures may be a sufficient response to crime in many instances.

54. The Tenth Congress may wish to discuss to what extent restorative justice approaches may be applied at various levels, with or without recourse to the criminal justice system, at the pre-trial stage (that is, investigation and prosecution) and during the trial and post-trial stages.

B. Restorative justice measures in the criminal justice process

55. Restorative justice measures, including mediation, are already applied at the initial stages of investigation in a number of countries, allowing for the reparation of damages and provision of compensation to the victim prior to trial. For that purpose, police officers are able, in appropriate cases, to initiate the application of victim-offender reconciliation measures, with monitoring mechanisms in place to avoid the danger of corruption and bribery. The application of restorative justice measures, particularly in cases of juvenile delinquency, requires police officers to provide complete information on such measures and programmes to both the victim and the offender at an early stage of the proceedings. Restorative justice measures are not to be limited to only petty offences. Restitution and victim-offender reconciliation are considered important factors in re-establishing social peace when dealing with violent crimes.

56. The responsibility of the community for solving conflicts linked to crime should be emphasized. While civil-law approaches designed to ensure justice, repair damage and provide restitution or compensation to the victim may be strengthened, conflict resolution should not become private business, but rather should proceed in the context of established alternatives to regular criminal proceedings. Such diversion away from the formal system into mediation and other community-based programmes can prove to be useful and adequate.

57. When carrying out restorative justice measures, the mediator ensures respect for the rule of law (including the principle of proportionality), as well as the protection of the rights of the offender and of the interests of the victim, bearing in mind that the two are not mutually exclusive: protection of the victim does not necessarily result in restrictions of the rights of the offender. Both the victim and the offender should have access to, *inter alia*, free interpretation, medical care and, when applicable, legal representation. Recently, in some countries, measures have been taken with a view to strengthening restorative justice in rural and urban areas, including improving professionalism in conflict resolution, both inside and outside the criminal justice systems.

58. Community-based and problem-solving policing, which are more sensitive to the pressing needs of the victim, need to be encouraged in order to avoid the risks of double victimization during the investigation through, for example, insensitive treatment or interviews. This is of particular importance when dealing with victims of violent crimes, for which special police investigation training is necessary. Investigation of violent crimes, particularly against women and children, also requires sensitivity, including gender and children perspectives.

59. Effective conflict resolution may obviate the need for a formal prosecution, particularly when the successful application of restorative justice measures supports the prognosis that the offender will not commit further crimes. Investigating judges and prosecutors could encourage the offender and the victim to progressively move towards reconciliation, taking into account that the re-establishment of peace among the victim, the offender and the community may require a process of medium- or even long-term duration. The concept of restorative justice may result in a broadened scope of the function of a witness who, at the same time, is a victim of a crime. In the preparation for the trial hearing, the investigating judge or prosecutor should ensure adequate access to the court for the victim. The investigating judge and prosecutor should also provide the victim with all necessary information on his or her rights, as well as on existing victim assistance and compensation programmes and other services, such as medical treatment and protection in safe havens, for example, in women's shelters.

60. The implementation of restorative justice programmes should help to reduce heavy caseloads, and ensure that criminal justice systems deal only with cases where serious formal intervention by the system is required. The administration of criminal justice can thus concentrate on a limited number of cases, in which the suspects enjoy the benefits derived from the fundamental principles of a fair trial rather than being deprived of their freedom in pre-trial detention and, after months of detention, being released without a formal (trial) hearing.

61. Closer involvement of the community in criminal justice proceedings may have a direct impact on criminal justice policies. While a few criminal cases attract public attention, the vast majority of trials do not. The improved role of the media in reporting on trial hearings might be considered, with a view to: informing the public about the criminal justice system at work; raising public awareness of society's stake in effective crime prevention; and, at the same time, promoting respect for both the basic rights of the offender in criminal justice proceedings and the interests of the victim in the criminal justice system. However, some media reports are marked by sensationalism and a misperception of how the justice system operates. The responsibility of the media needs to be stressed in that connection, while, concurrently, public relations could be strengthened by the court administration.

62. Restorative justice measures may also be taken into consideration within the formal trial. In so-called adhesion proceedings, the claim of the victim for damages or reimbursement of expenses can be joined to the case brought by the State. The penal sentence *per se* can then include a ruling that would give the victim the legal right to judicial relief without having to sue the offender as plaintiff in a separate civil-law proceeding. At the same time, the obligation to compensate the victim may be taken into account, as part of the punishment, when deciding on the penalty for the offender. Yet another possibility could be a form of consensus sentencing as a useful means of promoting a restorative approach. Those processes are often in line with traditional forms of justice and conflict resolution in many countries.

63. When deliberating on the penalty, the court may also consider compensation as a mitigating factor. That would involve cases in which the offender has compensated the victim prior to trial or has started to do so.

64. Imprisonment usually creates a situation in which offenders are incapacitated and thereby unable to compensate victims, especially when, as a result of the deprivation of liberty, they are cut off from the outside world and gainful work opportunities. In order to allow sentenced offenders to provide reparation for victims, a range of measures can be applied, including probation and work release, as well as community service, bearing in mind that non-custodial measures also help to alleviate prison overcrowding.

65. Another alternative to custody is electronic surveillance. While the installation of such surveillance systems might be costly, they will reduce the maintenance costs of incarceration in the long run, as well as helping to maintain the family life of the offender and community links and opportunities for gainful work. However, the use of electronic surveillance has to be carefully examined for possible violations of human rights in order to ensure that only those offenders are subject to surveillance who otherwise would be imprisoned, thereby avoiding so-called net-widening.

C. Fairness to victims and offenders

66. With regard to the deprivation of liberty, imprisonment should not deprive the offenders of the opportunity to provide reparation to victims. Provisions for meaningful and adequate remunerated work should rank high on the list of priorities of a prison administration, with potential employers playing a constructive role by offering offenders and ex-offenders appropriate possibilities for work.

67. In many cases, the sense of justice of the offender needs to be stimulated, including his or her own accountability for the crime committed. However, the sense of fairness of the offender can only be strengthened if the prison administration does justice to the offender, respecting the principle that prisoners are incarcerated as, but not for, punishment. Consequently, poor prison conditions that result in inhumane or degrading treatment are bound to undermine the sense of justice of the offender and reduce the motivation to change.

68. A restorative justice approach, which also aims at preventing recidivism, requires strengthened efforts to provide adequate mental and physical treatment for offenders and pre-release assistance programmes in

preparation for the reintegration of the offender into society. That includes job-related training programmes in prisons, with a view to securing the economic independence of prisoners once released. As many countries face high unemployment rates, treatment programmes should also aim at providing strategies for ex-offenders to cope with unemployment and to enhance their skills in a competitive job market.

69. Community involvement in custodial institutions is an important means of ensuring that prisoners maintain contacts with the outside world. In many institutions, prison officers believe that such contacts may undermine or endanger prison security and order. There are, however, positive examples which show that prison visitors, religious groups and other relevant organizations can assist in meeting the goals of imprisonment, helping offenders to lead law-abiding lives after their release. Victims wishing to visit offenders in prison could be assisted by prison professionals in establishing a basis for victim-offender reconciliation.

70. Attention should be devoted to promoting systematic efforts to strengthen regional and international cooperation in such a process. Restorative justice measures and the strengthening of restorative processes could be part of broader development programmes, taking into account the special needs of developing countries and their indigenous traditions, which have relied on customary forms of restorative justice. Traditional conflict resolution practices may offer advantages over other methods in the context of efforts to build upon such traditions to develop an effective capacity to deal with violence, crime and conflicts in society.

71. Restorative justice policies offer several comparative advantages. Their application would allow the criminal justice system to be used more efficiently, concentrating its efforts and limited resources on more serious offences, thus contributing to reducing the prison population, easing prison overcrowding and, consequently, diminishing the maintenance costs for prisons. By allowing offenders to stay with their families and continue their social and professional activities, it might be possible to help the offender to readjust to society and to avoid the economic hardship posed for single-parent families. The burden of assisting the offenders and their families would then not fall on the social security schemes, where they exist, or on the informal social network, such as relatives, neighbours and friends. Moreover, the working potential of offenders could be utilized in the public and private sectors, for instance, by community service and social work initiatives. In the long run, the use of restorative justice measures would be of double benefit for the development process of a country: by avoiding the disruption of valuable human and material resources; and by stimulating economically productive activities. A properly functioning criminal justice system and the use of fair restorative justice measures would also contribute to increased confidence in the stability and efficiency of the criminal justice system and an enhanced climate of security, which may be a decisive element in spurring foreign investment and international technical assistance.

72. A balanced approach offers the best prospects, ensuring that the rights of the offender, as recognized in international and regional instruments (that is, the Standard Minimum Rules for the Treatment of Prisoners[2] and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110, annex)), and the rights of the victims, as highlighted and provided for in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), are adequately respected.

73. A guide for policy makers on the implementation of the Declaration and a handbook on justice for victims, concerning the use and application of the Declaration, have recently been drawn up by the Centre for International Crime Prevention to assist in developing victim-sensitive policies, procedures and protocols and in executing victim services programmes. Accordingly, wide dissemination of both the guide and the handbook should be strongly promoted. There is a need to strengthen technical assistance activities, in particular, the development of training programmes on the use and application of the Declaration. The wide dissemination of the handbook for practitioners and the guide for policy makers could be part of a general process of developing professional training and techniques for public education on the need for restorative justice for the victim and

offender alike. Other techniques would include wider media involvement and public relations campaigns based on ethical codes of practice and using new information technologies, such as multimedia presentations and the Internet.

D. International cooperation on restorative justice

74. Attention should also be given to the provision of appropriate international recourse and redress for victims where national channels may be insufficient, for instance, in cases involving transnational crime. The following could be included among the many proposals that may be considered: the possible appointment of an international ombudsman to assist in obtaining recourse and redress at the international level; and the possible expansion of existing human rights complaint procedures with a view to restoring impeded rights or otherwise obtaining some kind of redress. A positive development has been the establishment of victim and witness units in the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandese Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994. The establishment of such a unit within the structure of the future International Criminal Court has also been proposed. The Tenth Congress may wish to make suggestions in order to support the recommendations of the eighth and ninth congresses and of expert group meetings concerning compensation to victims of crime and abuse of power, including the proposed establishment of an international fund for crime victims.

75. At the regional level, victim policies formulated within the framework of existing structures of cooperation, for example the Council of Europe and the regional courts of human rights (such as the Inter-American Court of Human Rights) could be adopted in other regional initiatives. In that context, the regional institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network should be further strengthened in their victim-related activities at the regional and subregional level. Those activities could include comparative surveys and evaluation studies, as well as model projects and demonstration schemes for technical assistance. Emphasis should also be placed on the importance of cooperation with non-governmental organizations involved in such activities.

76. The Tenth Congress could provide a forum to facilitate the exchange of information and experiences on different restorative justice measures that have proved successful, with emphasis on how a proper balance between the interests of victims and the rights of offenders can be ensured. Information on promising practices and legislation on victim-related issues should continue to be included in the database and clearing-house efforts to provide a continuing service for both government agencies and non-governmental organizations, including victim groups.

E. Questions for discussion

77. The regional preparatory meetings may wish to consider the following questions:

(a) What practical measures and programmes have been implemented by States to incorporate the principles of restorative justice into the criminal justice system at its various stages, including the pretrial, trial and post-trial stages?

(b) What have been the limitations of implementing the means of restorative justice in the criminal justice system? In what circumstances has their implementation been found to be inappropriate or unsuccessful?

What basic principles should govern the implementation of restorative justice processes so as to preserve the balance between the rights and interests of the victim, the offender and society?

(c) What can be done at the international and regional levels regarding the promotion of restorative justice, including technical assistance to ensure greater fairness and accountability within the criminal justice system?

Notes

[1]*Official Records of the Economic and Social Council, 1997, Supplement No. 10* (E/1997/30), para. 75.

[2]See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.94.XIV.1), vol. I, part 1, sect. H.

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PREPARATIONS FOR THE TENTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Draft discussion guide on the workshops, ancillary meetings, symposia and exhibits to be held at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

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INTRODUCTION

1. The Commission on Crime Prevention and Criminal Justice, at its sixth session, expressed its support for the format followed for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995.[1]

2. At the fourth session of the Commission, it was stated that the workshops conducted during the Ninth Congress had proved to be extremely useful in sharing experiences and know-how. It was suggested that, at future congresses, workshops should deal with topics of interest to both developing and developed countries; take a multidisciplinary approach, actively involving entities with different areas of expertise and operation in their organization and conduct; identify recent trends and emerging issues in crime prevention and criminal justice; stimulate among participants discussions oriented towards finding practical solutions to problems; and achieve a multiplier effect by generating practical applications after the congresses.[2]

3. The present draft discussion guide has been prepared to facilitate the substantive discussion of the issues to be covered by the workshops to be conducted within the framework of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

A. Practical features and impact of the workshops

4. The United Nations congresses on the prevention of crime and the treatment of offenders have seen a progression in terms of their outreach, research base, political influence and impact, have focused on specific

issues and have furthered the exchange of experiences and expertise in the fields of law enforcement, prosecution, court administration, the treatment of offenders and victims, and crime prevention.

5. The Tenth Congress presents an opportunity to further adapt the format of the congresses to the evolving needs of the international criminal justice community within the current process of rationalization of the activities of the United Nations Crime Prevention and Criminal Justice Programme, with a view to strengthening its technical cooperation capacity.

6. A number of projects emanated from the workshops conducted during the Ninth Congress. The first was the interregional training course "The United Nations Crime and Justice Information Network: Providing Information to and from Developing Countries" held at Seoul from 9 to 13 September 1996 with the support of the Government of the Republic of Korea. As a result of that training course, a resource book on database development and electronic networking was published with the financial assistance of the Ministry of Justice of the Republic of Korea. Copies of the resource book will be made available to the Commission at its seventh session.

7. Further to the workshop organized at the Ninth Congress on the topic "Extradition and international cooperation: exchange of national experience and implementation of relevant principles in national legislation", the International Institute of Higher Studies in Criminal Sciences and the International Association of Penal Law hosted the Intergovernmental Expert Group Meeting on Extradition at Siracusa, Italy, from 10 to 13 December 1996. At that Meeting, the Expert Group elaborated possible changes to the Model Treaty on Extradition (General Assembly resolution 45/116, annex). The Commission at its sixth session considered the recommendations of the Expert Group (E/CN.15/1997/6 and Corr.1, annex). On the recommendation of the Commission, the Economic and Social Council adopted its resolution 1997/26, in which it recommended to the General Assembly the adoption of a draft resolution on international cooperation in criminal matters. The draft resolution was subsequently adopted by the Assembly as its resolution 52/88. In section II of that resolution, the Assembly decided that the Model Treaty on Extradition should be complemented by the provisions set forth in the annex to that resolution.

8. Follow-up activities of the workshop of the Ninth Congress on the role of criminal law in environmental protection have included the international conference entitled "Crime against the Environment: A Global Commitment" and the training seminar entitled "The First International Training Course on Environmental Protection and Law Enforcement", both organized by the United Nations Interregional Crime and Justice Research Institute (UNICRI). Two project proposals also emanated from the workshop: one entitled "Improving criminal prosecution of environmental crime: criminal law and its administration in international environmental conventions in small island States in the South Pacific", which led to the convening of a regional workshop on criminal law and its administration in international environmental conventions, organized jointly by UNICRI and the Commonwealth Secretariat; and the other entitled "The implication of organized crime in legislative business: the case of environmental crime", also implemented by UNICRI.

9. The above examples show that the output of the workshops may vary, depending on the subject of each workshop and the logistics and financial commitments required for the output to be translated into practical action. However, their common denominator has been a clear policy orientation, with follow-up that includes training and dissemination of information.

10. Though global in nature, the Tenth Congress topics and the relevant preparatory work and follow-up should be approached bearing in mind the different needs and regional, subregional and national contexts of the participants.

11. There should be proper reporting to the Tenth Congress on the results of the workshops to ensure that there is adequate follow-up to the initiatives proposed by Member States, perhaps using the arrangements envisaged by the Commission for the strategic management of the United Nations Crime Prevention and Criminal Justice Programme. To assist in implementing the recommendations of the workshops Member States would be requested not only to announce their possible commitments at the workshops, but also to propose a plan on how to achieve the stated objectives.

12. In the interest of strengthening the practical orientation of the workshops, and within the broad organizational framework outlined in Economic and Social Council resolution 1994/19, the Commission at its seventh session may wish to consider recommending the following steps:

(a) Encouraging of possible donor countries, through their development aid agencies or other interested entities, to include in their budgets provisions for supporting and financing the preparations for the workshops and for implementing certain outcomes, as agreed upon in the course of action envisaged between interested countries and entities and the Secretariat, as appropriate;

(b) Inviting donor countries to provide financial support for the participation of representatives of least developed countries and countries in transition in the workshops, as was the case for the Ninth Congress, pursuant to Council resolution 1993/32;

(c) Promoting the preparations for and later implementation of the outcome of the workshops at the domestic level by providing relevant entities and individuals with information, advice and expertise gained from action taken before and during the workshops;

(d) Conducting the proceedings of the workshops in such a way as to ensure focused and action-oriented results with practical follow-up activities aimed at providing technical assistance.

B. Ancillary meetings, symposia and exhibits

13. The Commission, at its fourth session, noted that it would be desirable to review the approach to the ancillary meetings, symposia and exhibits to ensure that they would be integrated into the congress activities.[2] Such events should be planned bearing in mind both the main agenda items and the topics of the workshops and drawing upon the experiences of the Ninth Congress and earlier congresses, and their focus should be more closely geared towards attaining a practical impact.

14. New parameters and agendas for ancillary meetings of professional interest groups could be prepared and discussed with their potential organizers. With reference to symposia and exhibits, Governments, intergovernmental and non-governmental organizations and the private sector might be advised on how best to stage such events during the Tenth Congress, so that they will be attuned to its overall theme and to the issues covered in the workshops. Subject to available resources, including staff, it might be possible for the Secretariat to offer such advice to the entities planning to hold the ancillary meetings, symposia or exhibits.

I. COMBATING CORRUPTION

15. In its resolution 51/59, the General Assembly adopted the International Code of Conduct for Public Officials, annexed to that resolution, and recommended it to Member States as a tool to guide their efforts against corruption. In its resolution 51/191, the Assembly adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, annexed to that resolution, and requested the

Economic and Social Council and its subsidiary bodies, in particular the Commission on Crime Prevention and Criminal Justice, to examine ways, including through binding international legal instruments, to further the implementation of the Declaration, to keep the issue under regular review and to promote the effective implementation of that resolution.

16. Urgent and concerted action was required to deal with corruption at all levels, taking into account its complex and elusive nature and its links with other forms of criminal activities. Options must be explored to strengthen action and improve concurrent, well-coordinated activities and interventions to prevent corruption in the public and private sectors.

17. International organizations are helping in the fight against corruption by providing aid to bring about democratic reform, more competitive economies and improved governance. Nonetheless, closer cooperation, better coordination and more focused efforts are needed to ensure that the attack on corruption is systematic in nature. The United Nations Development Programme, the World Bank and the International Monetary Fund, for example, have expressed their intention to monitor levels of corruption, bribery and the lack of transparency in public administration when negotiating loans with countries. The rules of the World Trade Organization link transparency to free competition in the global market and to international commercial arbitral jurisdiction.

18. Developing countries and countries with economies in transition are among those most in need of assistance, particularly in identifying and reacting to problems, and should be the focus of technical assistance activities. A number of technical assistance projects that have recently been launched to that end by the Centre for International Crime Prevention include the two seminars on anti-corruption strategies for central and eastern European countries that were organized by UNICRI.

19. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted within the framework of the Organisation for Economic Co-operation and Development (OECD) on 21 November 1997, deals with some of the most pressing problems created by corrupt practices in international commercial transactions. The Convention is aimed at ensuring a functional equivalence among the measures taken by parties to the Convention to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of the legal system of any of the parties.

20. The convergence of views of and efforts by Member States and international organizations is supported by several non-governmental organizations operating nationally and internationally. In particular, Transparency International seeks to encourage and support the involvement of civil society in developing and implementing national programmes against corruption. The Lima Declaration against Corruption, adopted in 1997 by the eighth International Anti-Corruption Conference, held at Lima from 7 to 11 September 1997, addressed many important issues in that regard.

A. Scope

21. The knowledge, political directions, shared beliefs and wealth of material generated on the issue of corruption require a systematic and coordinated initiative to best utilize the synergies at work. This is an area where the international community may muster broad agreement and advance common interests, which should be exploited to exchange experiences and devise new strategies for the prevention and control of this phenomenon.

22. The sharing of knowledge in the context of the Tenth Congress workshop on the issue would serve the interests of all participants: Member States would learn from one another's experiences, focus their needs and, possibly, identify solutions; individual experts would improve their knowledge so as to better organize their

thinking on the issue and enhance their response to corruption; intergovernmental and non-governmental organizations would be able to fine-tune their missions and tailor their services to respond to existing and prospective needs.

23. The substantive framework of the workshop would include an assessment of the general situation and dynamics of corruption in order to identify the types of conduct that are or should be criminalized so as to assess the current interest in the issue of corruption on a global level (i.e. whether there is a higher incidence of corruption, higher awareness of corrupt practices, or a lower level of tolerance of corruption in the post-cold-war era than previously or whether the current situation is indicative of a combination thereof). A study of the causes of corruption should be undertaken to examine new policies and tactics against corruption, as well as institutional and legal reform with long-term consequences. The workshop would also include an examination of the role of international organizations in combating corruption and an assessment of their contributions, including the impact of measures and changes introduced by international initiatives so as to evaluate what common ground has been reached and what bridges still need to be built across borders.

24. Within that broad scope, the workshop could focus on improving the assessment of corruption. The issues to be examined could include the improvement of methods for collecting and analysing data related to corruption and the strengthening of research on corruption, including the identification of particularly vulnerable targets.

25. The workshop could consider measures that might be taken to improve public awareness of the dangerousness of corruption and to decrease tolerance of corrupt practices. Those measures would include developing public education and public awareness campaigns, ensuring and encouraging public support for action against corruption and strengthening the freedom of the press and the right to impartial information.

26. The workshop could examine measures that might be taken to prevent corruption, which would include the following:

(a) Fostering responsibility at the local level by decentralizing the decision-making process, as appropriate;

(b) Strengthening accounting standards and practices;

(c) Developing regulatory and administrative oversight mechanisms, including independent auditing bodies to promote transparency in the management of public funds and in the decision-making process;

(d) Developing and effectively implementing codes of ethics for public officials, as well as for selected categories of professions, on the basis of the International Code of Conduct for Public Officials;

(e) Developing transparent and competitive procedures for tendering and supervising public works contracts and developing clear rules on procurement;

(f) Strengthening measures to ensure free competition, including antitrust regulations;

(g) Eliminating or curtailing bank secrecy;

(h) Strengthening measures to ensure transparency in the financing of political parties.

27. The workshop could also discuss how the effectiveness of crime control policies might be increased. This question would include reviewing the adequacy of national criminal laws, including the appropriate criminalization of bribery (including bribery or corruption of foreign public officials), fraud, the making of other illicit payments, abuse of power and breach of trust, misappropriation of public funds, money-laundering, conflict of interest and other acts, as well as development of corporate criminal responsibility, as appropriate.

28. In the same vein, the workshop could review the question of increasing the effectiveness of civil and administrative regulatory policies to control corruption.

29. In addition, the workshop could study the question of modernizing investigation, prosecution and the judicial process. This would include:

(a) Enhancement of techniques for investigating corruption;

(b) Establishment of specialized bodies against corruption;

(c) Improvement of inter-agency cooperation, including cooperation between fiscal and law enforcement authorities;

(d) Strengthening of the capabilities of investigative personnel and the judiciary;

(e) Improvement of the protection of and remedial action for victims of corruption;

(f) Increased effectiveness of mechanisms for the identification, seizure, forfeiture and confiscation of proceeds of corruption.

30. Finally, the workshop could discuss a range of measures designed to improve the efficiency and effectiveness of international cooperation. This would include exploring the possibility of developing and effectively implementing an international convention against corruption and bribery in international commercial transactions.

B. Objectives

31. The workshop would present and discuss successful examples of projects to prevent and control corruption and bribery carried out at the local, national, regional and international levels and would elaborate new initiatives. The problem-oriented discussion would focus on innovative programmes and approaches that might have a potential to be replicated in or adapted to other contexts. Technical cooperation activities might benefit from the exchange of experiences and views between officials and practitioners, which would make the workshop an issue-oriented planning session where operational projects, to be implemented bilaterally or multilaterally, might be developed.

32. The objectives of the workshop would be, *inter alia*, the following:

(a) To provide advice on and expertise in the elaboration and implementation of comprehensive strategies and mechanisms for preventing and controlling corruption;

(b) To provide advice on training programmes for key public officials, including law enforcement personnel, the judiciary, auditors and personnel responsible for public contracts and procurement, so as to enhance standards of professional conduct and accountability;

(c) To develop sustainable public campaigns involving the media, educational institutions, business and community leaders in order to change attitudes, reduce tolerance of corruption and enlist public support for efforts against corruption;

(d) To collect and analyse national measures, laws, investigative techniques and strategies against corruption in order to elaborate compilations and resource manuals;

(e) To develop an exemplary checklist of measures, the presence or absence of which in domestic legislation might facilitate corruption.

33. Such action should be based upon the implementation of the International Code of Conduct for Public Officials and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, to be complemented by the revised and expanded manual on practical measures against corruption.[3] Technical assistance projects to be discussed at and elaborated by the Tenth Congress might benefit from strategies and measures already scrutinized and accepted by Member States.

34. The workshop would also benefit Member States by identifying priorities in advancing international agreements and cooperation arrangements, while devoting the necessary energy and resources to creating an environment resistant to corruption or one in which corruption would no longer pay.

C. Format

35. In advance of the Tenth Congress, States and international and other interested organizations might wish to communicate their interest in participating in or organizing the workshop activities and to identify their substantive concerns for workshop discussion, including their technical assistance proposals and needs. Their views might be incorporated in national position papers, on the basis of which technical cooperation activities could be projected and implemented.

36. A preparatory meeting might be useful to discuss the matching process and identify some of the projects that might be agreed upon at the Tenth Congress and then followed up.

37. States and international and other interested organizations might wish to submit to the Tenth Congress papers, reports and project proposals highlighting programmes and resources currently available in their countries that might be relevant elsewhere.

D. Participation

38. Participants would include government officials from ministries or departments of justice, interior, finance, public works, trade and other sectors of the public administration that might contribute to the prevention and control of bribery and corruption. Participation from the private sector would greatly add to the workshop, particularly from firms and companies operating in foreign markets, as well as from intergovernmental and non-governmental organizations active in this field.

E. Results

Multiplier effect

39. The workshop would allow the exchange of experiences, knowledge and reactions to bribery and corruption and, therefore, provide informed solutions and proposals for various forms of technical assistance,

including policy measures and strategies, drafting legislation and training. In addition, the workshop would facilitate mutual interaction and understanding between the public sector and the private sector and their respective needs and policy options in connection with the prevention and control of these phenomena.

Policy impact

40. The workshop and the envisaged follow-up action would generate practical solutions and technical assistance projects involving the participation and mutual assistance of Member States and interested inter-governmental and non-governmental organizations.

41. Public campaigns against corruption, including activities to foster the prevention of corruption both in the public sector and the private sector, might also be one of the outcomes of the workshop.

Technical cooperation value

42. The technical cooperation value attached to the workshop would be represented by a number of project proposals presented, discussed and finalized in the course of the Tenth Congress and its follow-up.

43. Given the number of national and international actors active in this field, some of which are extremely knowledgeable and experienced, the establishment of a database or any other mechanism for gathering and sharing information among interested parties might be considered. This would also contribute to streamlining efforts and optimizing the use of scarce resources.

II. CRIMES RELATED TO THE COMPUTER NETWORK

44. The rapid expansion of new information technologies has been accompanied by the abuse of those technologies for criminal purposes and the inability of States and other entities to cope with the growing number of legal problems, both national and transnational. The illegal intrusion into computer networks for fun or profit, the distribution of child pornography, extortion using threats to destroy computer and information systems and the penetration of computer systems for theft or fraud are forms of computer crime that require new forms of international cooperation for the investigation, prosecution and sentencing of the perpetrators of such crime. In the 1980s and early 1990s computer-related crime was on a smaller scale. Recent developments have shown that forms of crime related to computer networking have become transnational. In January 1997, there were 16.1 million computer servers worldwide. There were 36 million users of computers who could distribute information and 57 million who could access information. Another 14 million computer users had access to electronic mail only. Estimates suggest a monthly increase of 20 per cent in new users of electronic mail. Computer networks are also growing more vulnerable to illegal penetration.

45. Currently, 194 countries and territories and about 70,000 networks are connected by one Internet meta-protocol. Although the majority of those computer servers are located in the developed world, the proportion of those located in developing countries is increasing. The rapid growth of the Internet had intensified global debate on two issues: the human rights implications of that development with respect to providing protection of data and other information; and the need to improve international cooperation in investigating, prosecuting and adjudicating crimes against computer networks. While the first issue will be dealt with under the topic "Effective crime prevention: keeping pace with the new developments", the second issue will be dealt with under the workshop on crimes related to the computer network.

46. Extending and improving international cooperation in preventing and controlling computer-related crimes would enhance the effectiveness of Member States against various forms of transnational crime related to the rapid expansion of new information technologies by facilitating the detection, investigation, apprehension and prosecution of offenders. For example, electronic money-laundering, cases involving the large-scale embezzlement of bank deposits, obscene publications, incitement to racial hatred and the threat of organized crime and terrorist acts have been increasingly reported by the mass media but have not been adequately recorded by national law enforcement agencies grappling with the basic legal difficulty of identifying the *locus delicti* of these new and evasive forms of crime. OECD, the Council of Europe, the European Community and the political group of eight, consisting of the heads of State or Government of the Group of Seven major industrialized countries and of the Russian Federation, have been particularly concerned with these new forms of crime, which have spread from one continent to another. Finally, the General Assembly, in its resolution 51/210, section I, called upon all States to note the risk of terrorists using electronic or wire communication systems and networks to carry out criminal acts.

47. Experience shows that traditional legal procedures may not be adequate in dealing with such contemporary forms of national and transnational crime and in effectively enforcing established standards and controls. It is important to consider the development of a well-coordinated transnational approach to such crimes by reviewing present domestic approaches to fighting crime related to the computer network and discussing, in a global forum, practical measures aimed at increased responsiveness and more effective computer-related crime control and prevention.

A. Scope

48. The workshop on crimes related to the computer network would focus on the identification of joint projects that could be undertaken by States to improve and make more effective the exchange of information on the detection, investigation, apprehension, prosecution and sentencing of perpetrators of computer-related crime throughout the world. It would consider the basic elements of a plan for operational activities in which States could work together to strengthen international cooperation in combating computer crime.

49. The workshop would provide a forum where specific examples of successful international criminal investigations could be shared. The workshop might include a discussion of models for government regulation and self-regulation. It could also be a forum where specific technical cooperation activities could be arranged and announced, including training courses, study tours and fellowships.

B. Objectives

50. The workshop would promote cooperation in the exchange of information and expertise between States that might have varying degrees of expertise and experience in controlling and preventing computer-related crime. Its aim would be to serve as a catalyst for technical cooperation activities that would include the transfer of know-how from developed to developing countries.

51. Depending on the interest of States, the specific objectives of the workshop would be:

(a) To allow a critical examination by States of their criminal legislation, policies, practices and arrangements for the detection, investigation, apprehension, prosecution and sentencing of perpetrators of computer-related crime and for the protection of networks from infiltration;

(b) To provide information on national experiences and international cooperation in filtering and censoring abusive or offensive information;

(c) To enhance dialogue on the exchange of evidence for the purpose of prosecution and trial, with a view to harmonizing the legal and technical standards for transmitting and accepting such evidence;

(d) To serve as a basis for future technical cooperation activities that would provide States with practical guidance on procedures involved in responding to requests to share and use evidence, for example, through practical training for officials involved in fighting computer-related crime.

C. Format

52. In preparation for the workshop, States would be invited to communicate their interest in participating in or organizing workshop activities and to specify their substantive concerns for the workshop discussion. Their views could launch new partnerships for technical cooperation projects and other operational activities to be developed in the future.

53. Preparatory meetings might be useful for discussing the draft agenda of the workshop, including any case presentations, whether legal or technical in nature, and for making the exchange of views during the workshop more focused and practical.

54. States and other participants of the Tenth Congress could submit papers or reports highlighting the programmes or initiatives currently in progress or being proposed that might help to enhance the capabilities of other States to prevent and control computer-related crime. Those papers or reports could also highlight difficulties experienced in that regard that might be resolved through technical assistance activities. Finally, the workshop participants might be in a position to provide information on the following: tracing hackers; securing criminal evidence on the activities of hackers; the costs of such operations; and the composition of computer-related crime units in law enforcement agencies. The workshop would present participants with an opportunity to discuss, among other things, cooperative arrangements with foreign telecommunication operators, mutual assistance and extradition.

D. Participation

55. Participants would include government officials from the law enforcement, prosecution and judicial sectors and other experts acquainted with computer-related crime. In addition, representatives of the United Nations International Drug Control Programme, the International Criminal Police Organization (Interpol), other interested intergovernmental organizations and non-governmental organizations would be invited to participate in the workshop discussion.

E. Results

Multiplier effect

56. The workshop would assist participants in accumulating and systematizing information and experiences in controlling computer-related crime at the national and international levels. The material and advice presented at the workshop could be used to publish an updated version of the United Nations manual on preventing and controlling computer-related crime.[4] Progress made in extending and improving the control of computer-related crime would reinforce the effectiveness of action taken by States and computer operators against such crime by facilitating the apprehension and prosecution of the perpetrators of such crime and by arriving at more comprehensive and effective global measures to deal with the problem.

Policy impact

57. After the convening of the Tenth Congress, the recommendations of the workshop would enhance practical cooperation among Member States by facilitating the identification of common reference points and legal and technical approaches, including new opportunities for bilateral and multilateral education and training. Thus, the recommendations of the workshop might facilitate the development of a model course syllabus for students of criminal justice issues relating to the prevention and control of computer-related crime, as well as technical material for criminal justice officials involved in controlling such crime.

Technical cooperation value

58. The workshop would consider bilateral and multilateral assistance mechanisms for encouraging national agencies to introduce and implement more widely recommendations on safeguards for the protection of computer networks.

III. COMMUNITY INVOLVEMENT IN CRIME PREVENTION

59. The crime prevention action and other efforts carried out by States are most effective at the community level, for example in urban settings and in rural areas or villages. The relatively limited geographical area covered by such efforts allows for thorough planning and organization and for cost-effective use of resources for crime prevention operations and mutually supportive cross-sectoral activities. In recent years, special attention has been given to planning, designing, reorganizing and utilizing various means to secure safe streets and "defensible space" within a given community. However, social dynamics must also be taken into account.

60. Changes in society have led to changes in the level and structure of crime. New forms of crime have emerged, and both crime and offenders have taken on an international dimension. Opportunities for responding to those changes have been provided by technology, including new techniques for research and for monitoring the underlying factors of crime and the operation of criminal justice agencies. Many individual criminal justice agencies have computerized their operations. At the same time, there are shortages in personnel and resources and shortcomings in training and operational structure, and difficulties have been encountered in coordinating efforts and cooperating with other agencies at the local, national and international levels. The community can play an important role in controlling the new forms of crime that have emerged.

61. First, the concepts and methods of crime prevention have to be elucidated and widely disseminated. What constitutes crime prevention has to be viable and cost-effective in terms of its benefits to the community. It requires clarity in terms of policy, purpose and action. The modus operandi for delivering or supporting crime prevention strategies has to be well-planned and sustainable across various sectors. Such planning includes answering questions such as "Is there a demonstrable political will?", "Are there the infrastructure, services, facilities and human resources to prevent crime in the community?" and "Are there a consistent, concerted, harmonious approach and strategy to crime prevention at the community level?"

62. Ways should be explored to enable members of the community to participate directly in and support action to improve both their own personal security and public safety. Various kinds of community-based measures can be adopted to ensure a certain quality of life: taking precautionary measures when alone and in crowds; maximizing volunteerism, community service and civic duty; and assisting law enforcement authorities in bringing offenders to justice. A great asset to community-based crime prevention is a well-informed public. A cadre of responsible citizenry can be developed at school, at home and in the community to form a mutually reinforcing, interactive network. Public and private institutions and forums can be employed to promote good

citizenship, public service, volunteerism and law-abiding conduct, through civic education and other means involving for example the mass media.

63. Various partners should be fully involved and their contributions should be coordinated in any local, community-based crime prevention effort. Appropriate ways of interlinking services and matching needs and resources have to be found. In prevention efforts targeting young persons, it is desirable to bring together the family, public and private institutions and law enforcement and all other relevant sectors (health, employment, housing, recreation etc.) and to establish local coordinating councils or other mechanisms.

64. The need for law enforcement officials to be sensitive to community needs has gained attention in recent years. One issue that has become important is the extent to which law enforcement officials represent the ethnic composition of a given community. The degree to which the police safeguard human rights and uphold legal ethics is under constant public scrutiny. Highly publicized events in the media have brought such issues to the fore and have contributed to a common global public consciousness about desirable and undesirable police conduct. Proof or even charges of police corruption or brutality erode community confidence in the justice system and tend to nullify any progress made by the police in the right direction. Measures to promote police accountability, such as civilian review boards and codes of conduct (including the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex) and the Principles on the Use of Force and Firearms by Law Enforcement Officials[5]), can curtail abuses and upgrade police practice.

65. An increasing number of community-based justice operations involve, and require the support of, the public and rely on the utilization of community facilities and services. Insofar as they compete for limited community resources, it is necessary to involve the public in ways that will reduce conflict and resistance. New approaches might therefore be considered for such matters as the deinstitutionalization of corrections, the execution of community service orders, the settlement and reintegration of released prisoners and the provision of support for the incarcerated. It must be recognized, however, that ambivalence, apprehension and even resistance to certain justice processes on the part of the community remain obstacles to promoting community-based corrections and to rehabilitating offenders with the active participation of the community. Questions surrounding serious offenders and the recommitting of serious offences may be a source of conflict in the community and remain controversial, particularly in the light of certain cases that have shocked the public conscience.

A. Scope

66. The workshop on community involvement in crime prevention would focus on the role, involvement and coordination of different partners in crime prevention efforts at the local level: the public, justice officials, the private and public sectors, local administrators and community institutions. It would review experiences and refine methods and means of informing and mobilizing the public—such as by holding town meetings and coordination councils—in order to increase its involvement in maintaining security and safety, in advancing the quality of life in the community and in rendering support to justice processes at the local level.

B. Objectives

67. The workshop would examine viable options for effective community crime prevention and mobilize the necessary resources and know-how and the relevant partners. Its outcome would be the development of a series of handbooks for decision makers and practitioners involved in community-based crime prevention, with supportive action on the part of all relevant sectors, private and public. The series would focus on both policy and practical issues pertinent to crime prevention and public security.

68. The series, which would serve as both a guide for action and a training tool, would examine measures to contribute to the maintenance of public safety such as:

(a) Involving the public in community crime prevention and fostering public participation, partnerships and interlinkage at the local level across sectors and within the criminal justice system;

(b) Mobilizing financial support for community crime prevention, particularly in terms of the requisite infrastructure, facilities and personnel for social, employment, educational, health, recreational, welfare and correctional services, while at the same time bolstering community-level efforts to complement national action and broader initiatives;

(c) Achieving "safe streets" by means of physical design, "defensible space", urban planning, "target-hardening", community watch and other neighbourhood approaches etc.;

(d) Disseminating instructional information, raising public awareness, engaging in outreach activities and maximizing the role of the mass media in preventing crime;

(e) Involving young persons in civic duties and community service by means of formal and informal education, training and leadership;

(f) Developing, with the help of local justice authorities, mechanisms and a resource base for conflict resolution, mediation and the settlement of disputes with a view to minimizing resort to the official justice apparatus;

(g) Evaluating the above-mentioned measures in terms of their efficiency, effectiveness, degree of "displacement" etc.

69. These would involve, *inter alia*, the development of comprehensive short- and long-term plans and programmes, "defensible space" designs, public information campaigns and the setting up of the infrastructure and facilities for local crime prevention initiatives, including coordinating councils and community-based outreach and support networks.

C. Format

70. The workshop would provide a forum for the exchange of information, views and experiences regarding action and initiatives that have proved effective in preventing crime and enhancing public security and safety in various communities. A multisectoral panel of experts could make presentations on state-of-the-art designs, plans and strategies for community-based crime prevention, especially in urban settings. Best-practice scenarios and case studies would be utilized and assessments of broader crime prevention policies would be conducted, based upon the implementation of United Nations guidelines on that matter. Audio-visual and other models of promising physical designs could be presented, and socio-economic factors likely to ensure success could be analysed. In advance of the Tenth Congress, interested Governments, national and international agencies and organizations would be invited to communicate the following information: (a) additional pertinent issues for examination during the workshop; (b) their intention to participate in or organize a particular workshop activity; and (c) suggestions regarding possible technical cooperation needs, possibilities and resources. Such information could be incorporated in background documentation and other reports and papers for the workshop.

D. Participation

71. Those invited to participate in the workshop would include government officials from ministries of justice and other public agencies, urban planners, specialists in community crime prevention and experts from the private sector and representatives of relevant intergovernmental and non-governmental organizations. The participation of the following would be particularly welcomed: police, judicial and correctional authorities, communications specialists with experience in setting up public information campaigns and various forms of community outreach programmes and urban planners and architects, especially those with expertise in creating "defensible space" and safe streets.

E. Results

Multiplier effect

72. The workshop on community involvement in crime prevention would generate important information on effective community crime prevention experiences and could lead to such follow-up activities as:

(a) A series of handbooks on crime experiences and best practices (such handbooks have proved to be an important policy and practical tool for action at the local level);

(b) The elaboration of model legislation with a view to strengthening the role of local government agencies and organizations responsible for many of the services that affect the safety and health of communities, including education, urban planning, economic development and policing;

(c) Study tours leading to the development of shared perspectives;

(d) Print and audio-visual media campaigns designed to increase awareness of the importance of community involvement in crime prevention policies;

(e) The convening of meetings and seminars for involving the public in community crime prevention and fostering public participation, partnership and interlinkage at the local level across sectors and within the criminal justice system.

Policy impact

73. The workshop is expected to provide States with information on policies and practical guidance relating to community involvement in crime prevention, mobilizing the necessary resources and know-how and involving the relevant partners and coordination across sectors. The outcome of discussions on viable options for community involvement in crime prevention could be utilized in future training courses. A number of options and models might be provided to supplement the guidelines for cooperation and technical assistance in the field of urban crime prevention (Economic and Social Council resolution 1995/9, annex).

Technical cooperation value

74. New initiatives could be developed that would foster more effective community involvement in crime prevention. Not only physical designs and plans but also viable strategies and approaches and training aids could be used for technical assistance activities. Pilot courses that combine architectural design, town planning, urban studies and criminological and victimological studies might also be developed with the necessary support.

National and regional events geared to providing additional support to community involvement might be considered.

IV. WOMEN IN THE CRIMINAL JUSTICE SYSTEM

75. It is an expressed goal of the United Nations to advance the status of women, achieve gender equality, eliminate all forms of discrimination and discriminatory action perpetrated against women and safeguard their security, safety, enjoyment of human rights and fundamental freedoms. To that end, gender mainstreaming should be pursued by different fields of activity, disciplines and sectors, in an effort to remove obstacles to women's advancement and introduce gender balance in law, policy and practice.

76. The workshop on women in the criminal justice system would examine the issue from several perspectives, including female criminality, the treatment of female offenders and the question of women as practitioners in criminal justice systems. Differential treatment of the female offender and of the female criminal justice practitioner by criminal justice systems appears to be linked to the status of women in society and, within the broader context of social justice, to their demands for fair and equal treatment.

77. Gender mainstreaming is being sought through measures to ensure a "fair treatment" response to women, as victims, offenders and criminal justice practitioners. Gender-specific research concerning the victimization of women is being increasingly undertaken. It could result in a more gender-balanced perspective of the phenomenon and eventually shed new light on trends and causal factors, thereby pointing to possible approaches to the prevention of violence and crime directed at women.

78. The inclusion of women in the mainstream of development and social life should be seen as necessary to the social, psychological and economic growth of any country. International cooperation should be aimed at integrating women in development, improving their status, employment and working conditions and promoting legislation to protect their rights.

79. Despite the comparatively small, albeit increasing, number of women offenders worldwide, major issues need to be resolved with respect to their sanctioning, treatment and handling by the criminal justice system. Women offenders are often subjected to "differential", i.e. harsher, treatment for so-called petty offences or crimes involving morality. Most obvious in this respect are cases involving females charged with status offences, for which males would not be held liable. There are also concerns about the safety of women offenders in custodial institutions.

80. The capacity of a system to meet in a gender-balanced way the special needs of both women victims of crime and women offenders held in custody needs to be strengthened. This can be achieved by developing human resources (i.e. specialized training, staffing, placement and career development) and by building infrastructures (i.e. facilities and services). Study tours and joint training seminars could be conducted that would focus on meeting pressing needs, transferring know-how and achieving adequate responses to common problems.

81. For the sake of gender mainstreaming and in the interest of reform in that direction, it is desirable to advance the status of women as operatives within criminal justice systems. The initial step would be to integrate women into the ranks of criminal justice administrators, across all sectors and at all levels. In seeking gender equality in the administration of criminal justice operations, it is necessary to explore ways in which women can assume leadership positions through preparatory and in-service training and career development, as well as increased mobility.

A. Scope

82. The workshop would cover a range of issues relating to female criminality, the treatment of female offenders and the question of women as practitioners in criminal justice systems. The workshop would also consider various national experiences gained when implementing the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 52/86, annex) and other relevant instruments.

83. The workshop should provide a forum in which Governments may share their experiences in criminal justice reform with respect to gender issues, including modalities of cooperation to transfer knowledge and know-how, particularly by upgrading professional skills, sharing information and providing advisory services. The workshop would thus provide a forum in which specific technical cooperation activities, possibly including training courses, study tours or fellowships, could be arranged or announced.

84. In the context of the model strategies and activities, a training manual might be elaborated, based on the results of the workshop, that would be useful to States dealing with the issues with different levels of expertise and in different legal systems. Particular attention might be given to ways of approaching institutional capacity-building and human resource development in prompting the desirable response to the fair treatment of women, while promoting the application and maximizing the results of the model measures, strategies and activities.

B. Objectives

85. The workshop would be designed to promote the exchange of information and experiences between States on efforts made to improve the situation of women vis-à-vis criminal justice administration.

86. Specific consideration could be given to assessing measures that have been introduced in various States in order to implement the relevant United Nations instruments in this field, including the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.

C. Format

87. In advance of the Tenth Congress, States would be invited to communicate their interest in participating in or organizing the workshop activities, to specify their substantive concerns and to submit papers or reports with respect to the agenda of the workshop. An expert panel could make presentations on the above-specified objectives and respond to the observations made and the policies or programmes cited. Presentations providing concrete examples of advances made and proposals would be particularly welcomed.

D. Participation

88. Participants would include government officials from ministries of justice, criminal justice practitioners, officials from ministries and offices dealing with the status of women and intergovernmental and non-governmental organizations dealing with gender issues. In the light of the multidisciplinary nature of the subject matter, professionals from various sectors and fields of activity would be encouraged to take part in the workshop to the extent possible.

E. Results

Multiplier effect

89. The workshop would allow for disseminating information, exchanging experiences, advancing knowledge and transferring know-how in respect of gender-related issues. Of particular use would be presentations that would provide examples of measures that have resulted in considerable progress in advancing the status of women vis-à-vis criminal justice administrations, particularly in connection with the objectives cited above. Especially in the areas of research, training and building correctional infrastructure, certain models might prove transferable and could generate joint training courses and study tours, as well as policy recommendations for regional action. The workshop could provide an opportunity to refine further the discussion on possible modalities of cooperation at the regional and international levels and on desirable follow-up.

Policy impact

90. The workshop would facilitate coherent policy development to deal with long-standing gender-related problems, new types of professional training, refinement of research and research methodologies and further advocacy. It might promote the interlinking of decision- and policy-making with research and practice and provide greater possibilities for forward-looking, prospective planning and more effective operations regarding women in criminal justice administration.

Technical cooperation value

91. The workshop could generate mutual assistance and technical cooperation activities, joint research and training initiatives and other modalities of technical assistance in specific and collaborative projects. Additional results may relate to the development of procedures and mechanisms for law enforcement cooperation across borders to deal with the instrumental use of women in various kinds of trafficking activities.

Notes

[1]*Official Records of the Economic and Social Council, 1997, Supplement No. 10* (E/1997/30), para. 8.

[2]Ibid., *1995, Supplement No. 10* (E/1995/30), para. 9.

[3]*International Review of Criminal Policy*, Nos. 41 and 42 (1993) (United Nations publication, Sales No. E.93.IV.4).

[4]*International Review of Criminal Policy*, Nos. 43 and 44 (1994) (United Nations publication, Sales No. E.94.IV.5).

[5]*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

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PROMOTION AND MAINTENANCE OF THE RULE OF LAW: ACTION AGAINST CORRUPTION AND BRIBERY

Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 52/87. It contains an analysis of the information provided by Member States on action taken against corruption and bribery and presents an overview of the activities against corruption and bribery undertaken by the Centre for International Crime Prevention and by intergovernmental and non-governmental organizations. It also contains specific recommendations for consideration by the Commission regarding further work in the area of action against corruption.

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INTRODUCTION

1. The General Assembly, in its resolution 52/87 of 12 December 1997, on international cooperation against corruption and bribery in international commercial transactions, agreed that all States should take all possible measures to further the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and of the International Code of Conduct for Public Officials. The Assembly requested the Secretary-General to invite Member States to provide a report on steps taken to implement the provisions of the Declaration for compilation by the Secretary-General and consideration by the Commission on Crime Prevention and Criminal Justice, with a view to examining further steps to be taken for the full implementation of the Declaration.

2. The Assembly also requested the Commission to give attention to the question of the bribery of public office holders of States in international commercial transactions and to include in its agenda for a future session a review of action by States to implement the Declaration.

3. Pursuant to the above request, the present report contains an analysis of the information provided by Member States on action taken against corruption and bribery and the relevant activities undertaken by the Centre for International Crime Prevention and other intergovernmental and non-governmental organizations.* It also contains specific recommendations for consideration by the Commission regarding further work in the area of action against corruption.

4. At the time of preparation of the report, replies to the request for information had been provided by the following Member States: Belarus, Burundi, Ecuador, Fiji, Finland, Japan, Iraq, Iran (Islamic Republic of),

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*Reference is also made to the report of the Secretary-General on technical cooperation (E/CN.15/1998/9), the report of the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held at Dakar from 21 to 23 July 1997 (E/CN.15/1998/6/Add.1), and the report of the Asia Regional Ministerial Meeting on Transnational Crime, held at Manila from 23 to 25 March 1998 (E/CN.15/1998/6/Add.2).

Mali, Mexico, Morocco, Panama, Poland, Russian Federation, Qatar, Singapore, Slovakia, Spain, Sweden, Turkey, Uzbekistan and Venezuela.

5. Relevant information was also provided by the following Secretariat entities and international organizations, both intergovernmental and non-governmental: United Nations Development Programme; Economic Commission for Europe; Commonwealth Secretariat; Council of Europe; European Union; International Monetary Fund; Organization of American States, Organisation for Economic Co-operation and Development (OECD) and Transparency International.

I. ACTION BY MEMBER STATES AGAINST CORRUPTION AND BRIBERY

6. Information provided by Member States included copies or summaries of national legislation, for example, articles of penal codes, special laws or decrees on corruption and organized crime, commercial laws, procurement laws or administrative provisions. Work is envisaged to establish a database on relevant information received from all sources.

7. Presented below is a brief analysis of the responses received to date from Member States, categorized under several substantive topics.

8. *Making it a criminal offence to bribe or corrupt foreign public officials*. None of the States that replied indicated the existence of specific criminal law provisions for the prosecution of corruption and bribery in international commercial transactions. However, the relevant legislation of some States (Belarus, Iraq, Mexico, Spain, Sweden and Turkey) was broad enough to provide a basis for the prosecution of such offences. According to the Criminal Code of Slovakia, bribery in international business transactions can be prosecuted if this act was committed within the national territory. Articles 11 and 12 of the Criminal Code of the Russian Federation provide, in principle, for the application of national criminal law in determining the liability of a foreign citizen for an act of bribery in connection with international commercial transactions involving a Russian party. Venezuela affirmed that although its legal system does not currently recognize the offence of transnational bribery, the country has committed itself to considering the establishment of such conduct as an offence since the promulgation, on 22 May 1997, of the Law Approving the Inter-American Convention against Corruption. It was also stressed that the fact that the offence has not specifically been established must not be considered as an obstacle to rendering due assistance and cooperation in this respect within the limits of the national legal system. According to the Venezuelan Organic Law for the Protection of Property, any person who attempts to corrupt a Venezuelan public official and the conspiracy of an official with an interested party or an intermediary for the purpose of bringing about a particular result can be punished, the penalty being greater in the latter case if the purpose of the offence was to obtain money, gifts or unlawful profits.

9. *Review of the adequacy of national laws*. Some States stressed that the approval of the Declaration (Sweden) as well as the signature in December 1997 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Finland and Sweden) would require amendments to their national legislation, which should be introduced, as currently foreseen, in the course of 1998. Poland informed the Secretariat that currently the parliamentary committees were working on a new act on restricting business activity by persons performing public functions as well as on the amendment to the act on public procurement and contracts. The draft of the new act provides for the invalidity of a public procurement order or contract if in the proceedings leading up to its conclusion there had been a breach of law (which may also mean the conclusion of a contract as a result of a bribery). Slovakia was currently reviewing its Penal Code, which was to enter into force on 1 January 1999. The amended Code would contain several provisions to punish bribery and corruption offences. In September 1996, the Accountant General, the Chief Prosecutor for the

Administration and the Attorney-General of Panama appointed an inter-institutional commission for drawing up an anti-corruption programme and for examining existing legislative and administrative control systems to identify their weaknesses so as to implement appropriate remedial measures.

10. *International instruments against corruption and bribery in international commercial transactions*. On 17 December 1997, 33 States signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. On 2 June 1997, Mexico ratified the Inter-American Convention against Corruption; pursuant to article 133 of the Constitution of Mexico, that legal instrument became part of the supreme law of the country. On 22 May 1997, the President of Venezuela promulgated the Law Approving the Inter-American Convention against Corruption. That Convention was adopted within the framework of the Organization of American States (OAS).

11. States members of the European Union have participated in the negotiation of a convention that would require the criminalization of the bribery of European Union officials and of public officials of its member States.

12. *Tax deductibility of illicit payments*. The policy of States on the issue of tax deductibility of illicit payments made to foreign public officials varies. Finland noted that in its national law there are no special provisions on the deductibility of bribes. However, on the basis of case law and general principles, bribes have not been considered deductible expenses for income tax purposes. This also concerns international questions, such as the bribery of foreign public officials. Finally, it was noted that in taxation practice such cases had been rare, and that in the few cases that did occur, tax deductibility had been denied. In Morocco, Slovakia and Spain, according to national legislation, tax deductibility was denied in the case of payments for bribes. According to Polish legislation, deductibility was denied because of the illicit nature of the bribe for both the payer and the recipient.

13. *Accounting standards and practices*. Iraq, Iran (Islamic Republic of) and Spain provided detailed information on existing national measures to ensure transparency and fairness in accounting standards and practices.

14. *Bank secrecy provisions*. The Russian Federation, Slovakia and Spain provided specific information on bank secrecy. In the Russian Federation, under article 26 of the Federal Act on banks and banking activity, bank secrecy provisions do not impede the process of obtaining information in the course of criminal investigations or other judicial proceedings. According to Slovak legislation, banks are obliged to report to the police any transaction when acts or data related to it appear suspicious on the basis of the knowledge available to the banks. In Spain, bank secrecy is not an obstacle to judicial investigations into crimes involving corruption, bribery or illicit practices, since bank secrecy is not a fundamental constitutional right, nor is it covered by professional secrecy provisions of other laws (that is, the provisions envisaging privileged communications with lawyers, prosecutors, clergy etc.).

15. *Mutual assistance*. Belarus, Burundi, Finland, Russian Federation, Singapore, Slovakia and Uzbekistan informed the Secretariat that they have, or are in the process of developing, a set of instruments to cooperate with other States in the detention and prosecution of corruption cases, including bilateral and multilateral treaties, information exchange and cooperation between judicial authorities.

16. A Bill on Mutual Assistance on Criminal Matters was being prepared by the office of the Attorney-General of Fiji. That Bill would provide the framework for mutual assistance in criminal matters with other States of the region.

II. INTERNATIONAL INITIATIVES

A. United Nations

1. Centre for International Crime Prevention

17. The prevention and control of corruption and bribery was one of the central themes examined by the African Regional Ministerial Workshop on Organized Crime and Corruption, held at Dakar, from 21 to 23 July 1997 and organized by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat in cooperation with the United Nations International Drug Control Programme (UNDCP) and with the support of the Agency for Cultural and Technical Cooperation. The report of the Workshop is before the Commission (E/CN.15/1998/6/Add.1).

18. The Workshop approved the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption. In the Declaration, the Ministers reiterated their strong and sustained commitment to combat the phenomenon in all its manifestations and to promote a culture of accountability, transparency, competence and integrity in public life. For that purpose, participating States expressed their intention to develop programmes composed of interrelated and carefully coordinated measures, including administrative, civil, procedural and criminal legislation, as well as various regulatory provisions and administrative action designed to prevent and control corruption and bribery, as a matter of high priority. The elaboration of an international convention against corruption and bribery was recommended as the most effective response to the problem. In order to promote efforts in that direction, participating States undertook to begin working together for the elaboration of an African convention against corruption and bribery.

19. The prevention and control of corruption and bribery, including the strengthening of regional and subregional cooperation in that area, was also one of the main themes of the Asia Regional Ministerial Meeting on Transnational Crime, held at Manila from 23 to 25 March 1998. The report of the Meeting is before the Commission (E/CN.15/1998/6/Add.2).

20. The Centre undertook numerous technical assistance activities against corruption and bribery (that is, needs assessment missions, organization of training seminars and elaboration of projects), which are described in the report of the Secretary-General on technical cooperation (E/CN.15/1998/9). The Centre has also worked on the elaboration of a model law against corruption and on the revision of the manual on practical measures against corruption, first published in 1993.[1]

21. The model law, elaborated in cooperation with UNDCP, was designed as a tool for the provision of practical assistance to requesting Member States. The model law contains provisions for the prevention, detection and punishment of corruption, as well as for international mutual legal assistance in matters of corruption. The model law also includes a chapter setting out the procedures and potential enabling provisions for the establishment of independent anti-corruption bodies. Work on the model law continues to incorporate the experience gained in the execution of technical assistance projects and the use of earlier versions of the draft in several States. The application of the model is a dynamic process and should incorporate new developments and experiences.

22. In its resolution 1995/14 on action against corruption, the Economic and Social Council requested the Secretary-General to review and expand the manual on practical measures against corruption. Pursuant to that request, the Centre is currently working on the revision of the manual. The revised version, scheduled to be ready by the end of 1998, will include a typology and its causes, policies and methods that appear effective against corruption. The manual will also contain an extensive series of case studies, in order to serve as a

training tool. Further, the new manual will include the text of the International Code of Conduct for Public Officials, the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and other relevant instruments, such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Inter-American Convention against Corruption.

2. United Nations Development Programme

23. Within the framework of the Management Development and Governance Division, the United Nations Development Programme has undertaken a series of activities aimed at improving national and regional capacity to prevent and control the phenomenon of corruption. One of the most significant initiatives has been the creation of the Programme for Accountability and Transparency (PACT) under the public sector management and accountability subprogramme of the Division.

24. PACT is a global initiative that supports the establishment and improvement of financial accountability and management systems in selected recipient countries through technical assistance. Interventions take place through global initiatives, in regional programmes and at the country level. Through its three-pronged approach, PACT: (a) synthesizes, analyses and develops new strategies and approaches at its Global Secretariat; (b) tests innovative tools in financial management in selected countries; and (c) builds alliances and funds global networks in accountability.

25. PACT is specifically involved in the areas of financial planning, budgeting, cost control, accounting, reporting and auditing in the public sector. The programme also includes support in the area of improvement of integrity in governance, debt management and coordination of aid. The goal of the programme is to improve integrity at all levels of government, an objective which significantly contributes to the creation of an enabling environment for sustainable development.

26. PACT works strategically with other stakeholders in accountability, such as the World Bank, the International Monetary Fund (IMF), bilateral donors, the private sector, academia and other international organizations.

27. After building the foundations of the programme in 1996, PACT initiated three major projects. Those projects cover capacity development and training in records management, international accounting and regional and national audit institutions. Plans have been set in motion to organize collaborative workshops in the area of integrity improvement with the OECD Development Centre; to draw up a regional strategy in financial accountability for States in central and eastern Europe and States members of the Commonwealth of Independent States; and to hold a global meeting for key stakeholders in accountability and transparency. In addition, PACT prepared a paper entitled "Corruption and good governance", a desk review on strategies to prevent and combat corruption.

3. Economic Commission for Europe

28. The Economic Commission for Europe (ECE) has established a Centre for the Facilitation of Procedures and Practices for Administration, Commerce and Transport dedicated to improving the ability of business, trade and administrative organizations, from developed, developing and transitional economies, to effectively exchange products and relevant services. Its principal focus is to facilitate international transactions, through the simplification and harmonization of procedures and information flows, thus contributing to the growth of global commerce.

29. In view of the fact that the competitiveness of products coming from economies with corrupt or inefficient procedures can be threatened and that the associated cost and the lack of efficiency function as barriers to trade, ECE has developed a series of innovative trade facilitation techniques and recommendations. In order for trade operators to be efficient, procedural barriers must be removed from the trading process and the information requirements standardized. ECE has issued 26 recommendations to simplify and harmonize trade procedures.

30. In that connection, ECE has developed the Rules for Electronic Data Interchange for Administration, Commerce and Transport as a means of rationalizing procedures and using electronic data interchange to avoid fraud and corruption.

31. ECE, in its capacity as administrator of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention of 14 November 1975), has voiced its concern about the ever-increasing fraudulent activities undertaken by organized crime in the framework of the TIR customs transit system. Such customs fraud has led to considerable financial losses to the State budgets of the participating countries as well as to thousands of payment claims against the international insurers backing up the system.

32. In close cooperation with the transport industry and national customs authorities, a number of immediate control measures have been introduced to curb such illegal activities and a major revision of the TIR Convention has been undertaken, the first phase of which was concluded in June 1997. It appears that, as a first result of those measures, the number of fraudulent activities under the TIR system had been reduced considerably, and it was expected that with the coming into force of the revised TIR Convention by early 1999, further progress would be made to safeguard the TIR system.

B. Intergovernmental organizations

33. An analysis of the information provided by relevant intergovernmental and non-governmental organizations shows that there are some differences in scope, concrete measures or priorities. While the European Union h focused on the problem of corruption of its own officials and public officials of its member States, OECD has devoted a large part of its activities to the bribery of foreign officials in commercial transactions, which culminated in the signature of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in December 1997. The Council of Europe is involved in the possible drafting of a criminal law convention on corruption in general and of an international instrument on civil remedies to compensate for damage resulting from acts of corruption. On the other hand, institutions such as the World Bank, IMF and OECD are funding projects aimed at institution-building and reform.

1. Commonwealth Secretariat

34. The most relevant undertaking of the Commonwealth on the issue of corruption and bribery can be found in the Harare Declaration of 1991. By approving the Declaration, member States pledged that the Commonwealth and national Governments would work with renewed vigour, concentrating especially on the following areas: the protection and promotion of the fundamental political values of the Commonwealth; and democracy, democratic processes and institutions, the rule of law and the independence of the judiciary and just and honest government.

35. In April 1996, the Commonwealth Law Ministers met at Kuala Lumpur where they addressed the issue of corruption and issued a special statement on the prevention of corruption. The Ministers, *inter alia*, mandated the Commonwealth Secretariat to set up an Advisory Working Group charged with the identification of strategies to promote an anti-corruption culture and the development of model legal strategies, including an appropriate legal framework that takes into account the increasing role of the private sector in the system of

government. The meeting of Commonwealth Finance Ministers held in September 1997 addressed the issue of corruption and called upon the Secretary-General of the Commonwealth to convene an expert group to further examine the role of good governance in economic development and ways of effectively addressing corruption. The meeting of Commonwealth Heads of Government, held at Edinburgh in October 1997, considered the topic of the political process, governance and managing economic change, and emphasized the importance of good governance, including increased openness in economic decision-making and elimination of corruption through greater transparency, accountability and the application of the rule of law in economic, financial and other spheres of activity.

2. Council of Europe

36. As a result of the Conference of the European Ministers of Justice held in Malta in 1994, a Multidisciplinary Group on Corruption has been set up with a view to combating corruption from the criminal, administrative and civil law perspectives, on the basis of a programme of action against corruption, formally adopted by the Committee of Ministers in 1996. In particular, the Committee of Ministers requested the Multidisciplinary Group to draft, as a matter of priority: a framework international instrument containing the guidelines of the Council of Europe in combating corruption; a criminal law convention; a code of conduct for public officials; and a civil law instrument providing for compensation for damage resulting from acts of corruption.

37. The draft Criminal Law Convention on Corruption is currently in its final stage of negotiation and is likely to be opened for signature during 1998. It aims at aligning national legislation concerning certain corruption offences and at improving international cooperation in relation to the offences considered. The current draft of the Convention includes the following conduct which the Parties will have to criminalize in their legislation: active and passive corruption of national public officials; active and passive corruption of foreign public officials; active and passive corruption in the business sector; trading in influence involving national and foreign public officials; corruption of international officials; corruption in money-laundering; and corruption in auditing.

38. The purpose of the Model Code of Conduct for Public Officials, which is currently being negotiated within the Working Group on Administrative Law of the Multidisciplinary Group is threefold: to define the ethical climate that should prevail in the public service, to spell out the standards of ethical conduct expected of public officials and to inform members of the public what to expect of public officials in conduct and attitude.

39. A feasibility study on the drawing up of a convention on civil remedies for compensation for damages resulting from acts of corruption was adopted by the Committee of Ministers of the Council of Europe in February 1997. The study gives as complete a picture as possible of aspects related to civil law and corruption and shows that it is possible to devise a number of scenarios where use of civil law remedies might be effective against given forms of corruption. On the basis of the study, the Working Group on Civil Law of the Multidisciplinary Committee is currently negotiating an international instrument on civil remedies to compensate for damage resulting from acts of corruption. The text deals with substantive and procedural provisions including, *inter alia*, questions relating to compensation for damage, evidence, liability, non-pecuniary remedies, validity and effect of contracts, transparency and protection of whistle-blowers, rights for groups to participate in judicial proceedings, access to documents, obtaining evidence abroad, jurisdiction and enforcement of judgements.

40. Following intensive work by the Multidisciplinary Committee in 1997 on the definition of a common framework for national strategies against corruption, the Committee of Ministers adopted, on 6 November 1997, Resolution (97) 24 on 20 guiding principles for the fight against corruption. Those principles concern, *inter alia*,

the need: to take effective measures for the prevention of corruption and, in that connection, to raise public awareness and promote ethical behaviour; to provide appropriate measures for the seizure and confiscation of the proceeds of corruption offences; to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society; to ensure that the organization, functioning and decision-making processes of public administration take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness; to ensure that appropriate auditing procedures apply to the activities of public administration and the public sector; to endorse the role that audit procedures can play in preventing and detecting corruption outside public administration; to encourage the adoption, by elected representatives, of codes of conduct and to promote rules for the financing of political parties and election campaigns that deter corruption; to ensure that the media have freedom to receive and inspect information on corruption matters, subject only to limitations or restrictions that are necessary in a democratic society; to ensure coordinated criminalization of national and international corruption; to ensure that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption; and to encourage research on corruption.

3. European Union

41. *European Commission communication on corruption*. In response to a European Parliament resolution on corruption of 15 December 1995, the European Commission issued a communication to the Council of Ministers and the European Parliament on 21 May 1997 on a European Union policy against corruption, advocating a comprehensive strategy for dealing with corruption. The communication covers, and goes beyond, corruption within the Community. It incorporates measures in the area of criminal law, as well as measures to promote transparency and to achieve anti-corruption effects in particular with regard to public procurement, taxation, company accounts, blacklisting, external assistance and cooperation, and anti-corruption programmes.

42. *Action Plan to Combat Organized Crime*. The Heads of States of the European Union, at a summit meeting held in June 1997, adopted an Action Plan to Combat Organized Crime, which recognized that a major driving force behind organized crime is the pursuit of financial gain through economic crime, including corruption, and which sets out the details of measures to be taken to achieve a coherent approach in the fight against crime. The Action Plan recommends the adoption of a global policy against corruption, taking into account the work also carried out in other international forums, in order to enhance transparency in public administration, at the level of both the member States and the European Communities.

43. *Public procurement*. The European Union has adopted a series of rules containing provisions that enable contract authorities to exclude companies or enterprises that engage in misconduct or corrupt or fraudulent practices. The European Community adopted, notably as part of the programme of the single market, various directives designed to enhance transparency, to open up public procurement and to guarantee non-discriminatory treatment to suppliers from the European Union. Although those directives make no specific reference to corruption, some include provisions that could apply to corruption cases.

44. *Community-funded programmes*. The Programme of Assistance for Economic Reconstruction in the Countries of Central and Eastern Europe (PHARE) has provided some limited technical assistance for containing corruption in the public sector in eastern Europe. An example of such cooperation is the joint Council of Europe/European Union OCTOPUS programme on corruption and organized crime in central and eastern Europe. The OCTOPUS I programme (1996-1997) has recently been concluded, and it has yet to be decided whether to continue with an OCTOPUS II programme.

45. *Instruments dealing with corruption adopted by the Council of Ministers.* Two important instruments that deal specifically with the problem of corruption of Community as well as national public officials have been adopted by the Council and form part of the *acquis communitaire*. The first is the First Protocol to the Convention on the Protection of the Financial Interests of the Community, adopted on 27 September 1996, which provides that member States should criminalize active and passive corruption committed by or against Community officials and public officials of its member States that affect the financial interests of the Community. The second instrument, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, was adopted by the Council on 26 May 1997 and provides that all member States should criminalize active and passive corruption committed by or against Community officials and public officials of its member States, irrespective of whether Community financial interests are at stake.

46. *Other international developments involving the European Union.* At the international level, the European Commission has participated in the work of OECD and the Council of Europe for the furtherance of anti-corruption programmes. The Commission supported the adoption of common positions under title VI of the Treaty on European Union favouring criminalization of bribery of foreign officials to be pursued in OECD (as well as in the Council of Europe, where discussions are under way on a more comprehensive draft penal convention). Two European Union joint positions were adopted by the Council, the first on 6 October 1997 and the second on 13 November 1997.

4. International Monetary Fund

47. IMF action against corruption and bribery is mainly linked to its work in the areas of international money-laundering and governance.

48. The main IMF support for anti-money-laundering policies is provided to its member States primarily through technical assistance. In the area of foreign exchange markets, IMF technical assistance has recommended uniform application of the licensing and financial reporting requirements to all forms of foreign exchange dealers and of the standard provisions of the Financial Action Task Force on Money Laundering for anti-money-laundering surveillance, and called for reporting by foreign exchange dealers on the application of codes of conduct in foreign exchange markets. IMF provides technical assistance to help Member States contain tax evasion, and thus the related laundering of the proceeds of evasion. Technical assistance is also provided in framing and drafting banking, foreign exchange and related legislation as well as regulatory provisions. IMF management and staff have also contributed to the international anti-money-laundering effort through various publications and speeches, participation in seminars and meetings and a wide range of contacts with country officials and officials of other interested organizations.

49. With regard to governance, the IMF Executive Board, on 4 August 1997, approved a note that sets out the criteria for IMF involvement in the governance issue. IMF emphasizes that governance is primarily the responsibility of national authorities themselves. However, IMF involvement is called for when the ability of the Government to pursue sound economic and financial policies is affected by weak governance, and there is a significant current or potential impact on macroeconomic performance (for example, misappropriation of public funds and fraud by tax and customs officials). IMF provides technical assistance to support the efforts of States to improve their governance policies. Through such assistance, tax policy and administration, treasury systems, public expenditure policy and management, as well as institutional and policy-making capabilities, are strengthened and modernized, thus enhancing the transparency of government operations.

50. In addition, IMF research on governance has explored issues such as fiscal corruption, public sector wages and corruption and the effects of corruption on growth, capital accumulation and government expenditure.

5. Organization of American States

51. On 29 March 1996, the Specialized Conference of the Organization of American States adopted the Inter-American Convention against Corruption. Under its provisions, the instrument came into effect on 4 March 1997, the thirtieth day following the date of deposit of the second instrument of ratification.

52. At its twenty-sixth regular session, the General Assembly of OAS, by its resolution 1395 (XXVI-O/96), resolved "to instruct the Inter-American Juridical Committee, as a follow-up to its contribution to the adoption of the Inter-American Convention against Corruption, to develop model laws regarding illicit enrichment and transnational bribery, which Member States may draw upon". In its resolution CP/RES.689 (1092/96), the Permanent Council of OAS requested the Inter-American Juridical Committee, at its regular session in February and March 1997, to act, as a priority, on the mandate given in the aforementioned resolution, taking particular account of the Inter-American Convention against Corruption.

6. Organisation for Economic Co-operation and Development

53. In May 1997, the OECD Council adopted the Revised Recommendation on Combating Bribery in International Business Transactions. That Recommendation, which preserves the general undertaking of an earlier 1994 recommendation, elaborates specific commitments with regard to criminalization, taxation, accounting, external audit and public procurement, including contracts funded by development assistance.

54. In October 1997, a Workshop on Corruption and Integrity Improvement in the Context of Developing Economies was jointly organized in Paris by the UNDP Programme for Accountability and Transparency and the OECD Development Centre. In March 1998, a publication on selected presentations from the Workshop was to be released. The publication is designed to facilitate concrete follow-up action at the global, regional and country levels, and to encourage information-sharing and network-building for closer collaboration and strategic coordination among the key players in the fight against corruption.

55. In November 1997, following six months of negotiations, OECD members and five non-OECD countries adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention was signed by 33 States on 17 December 1997; entry into force is foreseen by the end of 1998. It should permit OECD and other States to move in a coordinated manner to adopt national legislation making it a crime to bribe foreign public officials. The Convention sets a broad, clear definition of bribery; it requires dissuasive penalties; it fixes a strong criterion for enforcement; and it provides for mutual legal assistance.

56. Over the course of 1998, the OECD Working Group on Bribery in International Business Transactions will monitor ratification of the Convention and develop procedures for monitoring performance related to both the Convention and the Revised Recommendation. It will also analyse on a priority basis a number of issues related to criminalization (for example, acts of bribery involving foreign political parties; advantages promised or given to any person in anticipation of that person becoming a foreign public official; bribery of foreign public officials as a predicate offence for money-laundering legislation; and the role of foreign subsidiaries and of offshore centres in bribery transactions) and begin to consider problems of private-sector corruption in international business transactions. Other OECD committees will examine the use of rules on export credits to fight international corruption and on assessing progress in reducing corruption in aid-funded procurement.

C. Non-governmental organizations

57. Transparency International (TI) is a non-profit, non-governmental organization, founded at Berlin in 1993, to curb corruption in international business transactions. During 1997, TI continued to provide its inputs and assistance to the work of several intergovernmental organizations, including the United Nations, the World Bank, IMF, OAS and OECD (particularly its Working Group on International Bribery).

58. TI provided its services to the council responsible for organizing the Eighth International Anti-Corruption Conference, held at Lima from 7 to 11 September 1997, and completed the publication *National Integrity Systems: the TI Source Book*, funded by the Ford Foundation. That publication, which brings together a wide variety of experience in building integrity systems that can contain corruption and a wide variety of instruments used to monitor assets, set standards and enforce effective laws, is a continuing project and will be regularly updated.

59. During 1997, the number of national chapters established or being set up in several States in Africa, the Americas, Asia and Europe reached 70. They are coalitions of business, labour, academic, professional and civic groups encouraging Governments to establish and implement effective anti-corruption laws, policies and programmes. Another development during the past year was the constitution of a Council on Governance Research.

III. CONCLUSIONS AND RECOMMENDATIONS FOR CONSIDERATION BY THE COMMISSION

A. Conclusions

60. Corruption is a complex phenomenon. Efforts to combat it require an integrated approach composed of different, but all equally relevant, elements including promotion of good governance and democracy, economic reform, awakening of civil society and strengthened and coordinated international cooperation.

61. In drawing some preliminary and general conclusions from the responses provided by Member States, it is significant to note an increasing awareness by Governments of the need to instil and nurture, through administrative and legislative initiatives, a culture of legality, accountability and transparency. Action taken within the United Nations and other international bodies has prompted legislative action by several States, while several others are contemplating similar initiatives. Further, the issue of corruption and bribery is increasingly considered by the Member States as a top priority at both national and international levels. More concerted international action is likely to become feasible and assume more tangible dimensions if such awareness and commitment are consolidated and further strengthened.

62. Another important consideration is that the fight against corruption and bribery can be effective only when there is a concrete and continuous synergy between all actors involved. Efforts at the international level can provide the impulse for action at the national level. International consensus is a powerful incentive that helps to create and sustain political will and serves as the engine for extending support, both political and financial, to Governments wishing to take action. At the national level, the responsibility falls equally to Governments, legislators and political parties and to civil society. Governments, however, should provide the leadership. Efforts should be directed at strengthening and sustaining their resolve and commitment. Corruption is a phenomenon that cannot be addressed with a single set of measures. Effective action requires vigilance over time, continuous monitoring of the situation, adjustments to the various measures put in place to deal with the problem, and, above all, uninterrupted commitment to accountability, transparency, competence and integrity.

63. In light of the growing needs of Member States, which are reflected in the considerable increase in the requests for technical assistance, the Centre for International Crime Prevention—subject to the availability of extrabudgetary funds—should expand and improve its operational capacity in the area of corruption. In addition to the services currently provided to Member States, including needs assessment missions, project formulation, advisory services for drafting legislation, organization of training seminars and preparation of model laws, the Centre could develop a series of new initiatives such as the following:

(a) Collection and analysis of national anti-corruption strategies in order to elaborate compilations of best practices that could be useful for the preparation of training material;

(b) Elaboration of comparative studies, which would assist States in designing, formulating and implementing joint strategies and collaborative arrangements to prevent and control corruption;

(c) Development of model courses for universities and schools of business and public administration;

(d) Organization of public awareness campaigns;

(e) Assistance in the elaboration of codes of conduct for private enterprises.

64. Despite the continuing divergence of views on the phenomenon of corruption and the existence of different approaches to its prevention and control, international efforts to fight the problem have considerably grown in recent years and a consensus on common measures has emerged. As already stressed in the previous report of the Secretary-General on action against corruption (E/CN.15/1997/3), it is now widely recognized and accepted as a common goal that steps should be taken to outlaw, prevent and effectively punish practices that undermine the functioning of the economic system, competitive conditions in international markets and the principles of equality, transparency and accountability. States are invited to criminalize certain acts according to their own legal systems and traditions; to disallow the political offence exception to extradition for corrupt officials; to limit bank secrecy, to take the profits away from corrupt officials through confiscation of illicit proceeds; and to encourage the participation of citizens and freedom of the press. In addition, there is a general recognition of the importance of the provision of technical cooperation, particularly in institution-building and reform.

65. The growing attention given by other international organizations to the issue of corruption is extremely important. However, it is equally important that the activities undertaken build and rely on the achievements and the significant work carried out in this area by the United Nations, especially the Commission on Crime Prevention and Criminal Justice. It is essential that those organizations, particularly funding institutions, should be actively encouraged to build a partnership with the United Nations. Such a course of action will ensure more efficient use of resources, while collective action is bound to have a more significant impact. A stronger partnership would also be instrumental in assisting developing countries and States with economies in transition to achieve a sustainable culture of legality and transparency.

66. Recent international developments, such as the signature of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the work done by the Council of Europe, indicate that the time is ripe for exploring the possibility of elaborating new global instruments to fight corruption.

B. Recommendations

67. The Commission on Crime Prevention and Criminal Justice may wish to:

(a) Make recommendations for international action that would sustain and strengthen the existing positive international momentum and would continue forging the required international consensus on action against corruption. In that connection, it is recalled that the General Assembly, in its resolution 51/191, requested the Economic and Social Council and its subsidiary bodies, in particular the Commission, to examine ways, including through legally binding international instruments, to further the implementation of the Declaration, so as to promote the criminalization of corruption and bribery in international commercial transactions;

(b) Identify ways of enabling the Centre for International Crime Prevention to act proactively by studying developments and regularly consulting with Governments, in order to be able to provide early warning and for the purpose of countering the effects of corruption;

(c) Identify ways of mobilizing extrabudgetary resources in order to continue expanding and improving the operational capacity of the Centre for International Crime Prevention for the provision of practical assistance to requesting States in the area of corruption and bribery;

(d) Identify means of improving coordination and fostering synergies, such as through coordination meetings, in the work of concerned United Nations entities and intergovernmental organizations, in particular UNDP, the World Bank, IMF, the Council of Europe, the European Union, OAS, OECD and the Association of South-East Asian Nations;

(e) Study the feasibility and the modalities of fostering and strengthening cooperation between the Centre and the private sector in developing anti-corruption strategies and measures, in view of the importance of the involvement of the business community in anti-corruption efforts and in technical cooperation.

Notes

[1] *International Review of Criminal Policy*, Nos. 41 and 42 (United Nations publication, Sales No. E.93.IV.4).